[fol. 16] Petitioner, in support of its claim hereinafter made that the said assessments of sales and Use Taxes against it are incorrect, respectfully shows the following facts:

The alleged sales Taxes assessed and the payment of which is demanded, are based upon the Petitioner's earnings for gathering and transporting crude oil from oil fields within the State of Mississippi where there were no trunk pipe line facilities for the transportation of said oil and where the oil was transported from lease tanks in the fields through short gathering lines direct to tank cars or to loading racks situated on railroad lines.

Petitioner's methods of operation in the gathering and transportation of such crude oil within the State of Mississippi began about December 1943, when Petitioner purchased from Allied Pipe Line corporation a gathering line system and tank car loading rack on the Illinois Central Railroad near the Pickens Field in Yazoo County. A gathering system was installed in the Cranfield Field, Adams County, in the latter part of the Year 1943 with lines leading to a railroad loading rack on the Mississippi Central Railroad at Noble in the vicinity of the field. Early in 1944 gathering line facilities were installed in the Eucutta and Heidelberg fields (Wayne and Jasper Counties) with loading racks at Hiwanee on the G. M. & O. Railroad and at Heidelberg on the Southern Railway to load crude oil from the respective fields. Temporary loading racks were constructed in 1944 and used to load small quantitites of crude oil gathered from the Gwinville and Mallalieu Fields.

In November, 1944, a trunk line was completed from the Cranfield Field to Gibson Landing on the West Bank of the Mississippi River, and oil from Cranfield which had previously been shipped by rail was moved out of the State by trunk line and loaded aboard barges at Gibson Landing. The railroad loading was then abandoned. In 1945 a 12" trunk line was constructed from Maryland Tank Farm of Standard Oil Company of New Jersey, near Baton Rouge, [fol. 17] Louisiana, north to a point near Liberty, Mississippi; from whence an 8" line was built to connect with the Cranfield-Gibson Landing trunk line system and a 10" line was built from Liberty northeastward to the Mallalieu Field in Lincoln County. This line was later extended to the Gwinville Field in Jefferson Davis County. Upon completion of

the Baton Rouge-Cranfield line in August, 1945, the Cranfield crude Oil which had previously moved west to the Mississippi River was moved south by pipe line to Baton Rouge. Upon completion of the trunk line connection, the loading rack for Mallalieu crude oil at Brookhaven was abandoned in August, 1945, and the rack for Gwinville crude oil at New Hebron was abandoned in January, 1946. In April, 1946, a line was constructed from the Eucutta Field to Heidelberg, and the Hiwanee loading rack was abandoned, although this rack has not yet been dismantled.

The gathering system in each of the fields, which are the sources of the various items of taxes above set forth, consists of lines of pipe extending from a central, or main, line connected with lease tanks which are located in the vicinity of oil wells on the various producing leases. As each respective oil field developes, the gathering system necessarily expands and lines are extended to other wells and lease tanks. The gathering system which was first in use in the various fields where in oil was transported from the lease tanks to loading racks and through to tank cars was a mere temporary expedient, and by reason of subsequent development trunk pipe lines have been laid within the state and used in replacing the said loading racks with the exception of Pickens and Heidelberg-Eucutta Fields where the develoopment has not yet been deemed sufficient to justify the extension of the said trunk pipe lines into said fields. The loading rack consists of a main pipe, or header, lying in or on top of the ground parallel to a railroad spur, with smaller perpendicular lines welded thereto extending upward to the loading rack walkway. On top of these perpendicular lines are movable connecting joints, so placed as to fit the [fol. 18] intake valves of tank cars on the adjacent spur track. In some instances small working tanks are constructed in connection with the loading racks to provide for accumulation of oil until tank cars for shipment have been spotted by the railroad. In some cases where production from a field is small, and in other cases in order to conserve tank space and to eliminate double pumping, the oil may be pumped directly from the lease tanks into tank cars.

Petitioner also charges that all of the said personal property for which Use Tax is alleged to be due as above set forth is used in and about the operations which are herein outlined for the gathering and transportation of crude oil.

Petitioner respectfully represents that neither the said

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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1948

No. 287

INTERSTATE OIL PIPE LINE COMPANY,
APPELLANT,

vs.

A. H. STONE, CHAIRMAN STATE TAX
COMMISSION

APPEAL FROM THE SUPREME COURT OF THE STATE OF MISSISSIPPI

FILED SEPTEMBER 18, 1948.

Sales Tax nor Use Tax assessed against it as above set forth is due nor should be collected for the reason that the Petitioner's operations in the gathering and transporting of crude oil from the producing leases in each of the oil fields is solely interstate commerce, and the tangible property against which Use Tax has been assessed is used solely in said interstate transportation of oil and is, therefore, used and consumed in the furtherance of interstate transportation or interstate commerce.

All oil which it gathers in the State of Mississippi is consigned for shipment to destinations outside the state, either by trunk pipe line, if available, or by railroad tank car. The gathering and transportation, where trunk line facilities are available, and the gathering and loading aboard tank cars, are covered by interstate tariffs which are regularly published and filed with the Interstate Commerce Commission. All oil gathered and loaded aboard tank cars is tendered for shipment by the owner or purchaser at the lease tanks in the producing fields. The tender of shipment specifies the quantity of oil to be moved, the origin and ultimate destination, and the tariff under which the shipment is made. It also contains shipping instructions as to consignee, destination, route of shipment, etc. Repre- [fol. 19] sentatives of the producer or shipper, gauge the oil in the lease tanks, run out the quantity designated, then again gauge the lease tanks and jointly sign the "Run Ticket" showing opening and closing gauges from which the quantity shipped is computed. The oil is then pumped into the main gathering line and thence to the loading rack. When tank cars for the shipment have been spotted at the loading rack, they are loaded and representatives of Petitioner obtain from the railroad the bill of lading and other shipping papers covering the shipment, showing the consignor of the oil as shipper, with Petitioner shown as agent of the shipper, and indicating thereon the designation previously specified by the shipper. For its services in gathering and loading the crude oil, Petitioner bills the shipper at the rate per barrel stipulated in its applicable I. C. C. Tariff.

Petitioner says that his gross income from its gathering and transporting of crude oil for which the alleged sales tax has been assessed is derived solely from interstate commerce and is exempt from the sales tax under Section 10109 Mississippi Code of 1942, which we quote as follows:

SUPREME COURT OF THE UNITED STATES

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INTERSTATE OIL PIPE LINE COMPANY,
APPELLANT,

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"There shall be excepted from the gross income used in determining the measure of the tax imposed in this Section so much thereof as is derived from business conducted in commerce between this State and other States of the United States, or between this State and foreign countries which the State of Mississippi is prohibited from taxing under the Constitution of the United States of America."

Petitioner charges that the Use Tax assessed against Petitioner as above set forth on the use of tangible personal property which is a necessary part of the Petitioner's gathering and transportation system and which is used and consumed in the furtherance of interstate commerce, is exempt by virtue of Section 10149, 1942 Code of Mississippi, which we quote as follows:

"On the use, storage, or consumption of tangible [fol. 20] personal property used or to be used or consumed in the furtherance of interstate transportation or interstate commerce, or on the use, storage or consumption of any property owned, used or to be used or consumed which is not procurable in the ordinary channels of trade in the state of Mississippi."

Petitioner further charges that not only are the Sales and Use Taxes assessed against it incorrect, because they come within the statutory exceptions as set out in the laws of the State of Mississippi as above quoted, but that said taxes are not assessable or collectable for the reason that all of the said operations by Petitioner, within the State of Mississippi, are in fact interstate commerce, and any alleged sales tax on its earnings from gathering and transporting of crude oil within the state and use, or compensating taxes against the tangible property used in connection therewith, are in violation of the commerce clauses of the Constitution of the United States, Article One, Section Eight, and both taxes are in effect a regulation of and a burden on interstate commerce.

Therefore, Petitioner presents this written petition within ten days from the date of the registered notice of the assessment of Sales and use Taxes at issue herein and prays that this petition may be properly files, and in response thereto, may the Commissioner grant a hearing on this petition, as provided by statutes applicable in such cases, at

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such time and place as may be hereafter designated by the Commissioner, and may the Commissioner fully investigate the questions herein set out before proceeding further with the alleged assessment or the collection of the said Sales and Use Taxes against this Petitioner.

Respectfully submitted, Alexander and Alexander, by Jas. A. Alexander, Walter D. Davis, P. H. Hunter.

[fol. a] [Caption omitted]

[fol. 1]

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL DISTRICT OF HINDS COUNTY, MISSISSIPPI

No. 11941

INTERSTATE OIL PIPE LINE CO.

vs.

A. H. STONE, Chairman of State Tax Commission

DECLARATION—Filed April 4, 1947

Comes Interstate Oil Pipe Line Company, Plaintiff, and brings this suit against A. H. Stone, Chairman of the State Tax Commission of the State of Mississippi, and Commissioner of Sales and Compensating Taxes, who is a resident and citizen of the State of Mississippi in the City of Jackson, First District of Hinds County and for cause of action says:

I

Plaintiff, Interstate Oil Pipe Line Company, is a corporation organized and existing under and by virtue of the laws of the State of Delaware, is duly qualified as a foreign corporation to do business in the State of Mississippi, and maintains in the City of Jackson, Hinds County, Mississippi, its principal Mississippi office in charge of its duly designated agent for service of process.

Defendant, A. H. Stone, is the duly and legally elected, qualified and acting chairman of the State Tax Commission of Mississippi, and is the official and legally designated commissioner for the collection of sales taxes and compensating, or use, taxes in the State of Mississippi. The defendant's office is in the State Capitol in the said City of Jackson, Mississippi, and he holds his said office and official position under and by virtue of the laws of the State of Mississippi.

II

Plaintiff, Interstate Oil Pipe Line Company, is a common carrier engaged only in the business of gathering and transporting crude oil for various shippers for hire, and is an

[fol. 2] interstate carrier operating under the jurisdiction of the Interstate Commerce Commission; and all of its transportation of oil in Mississippi is covered by tariffs which are regularly published and files with the said Interstate Commerce Commission. Said tariffs specifically provide that plaintiff will only receive oil for transportation when said oil is consigned for shipment to points outside the State of Mississippi.

III

All oil which plaintiff gathers and transports within the State of Mississippi is tendered to it for shipment by the owners or purchasers of the said crude oil at the lease tanks which are located at or near the oil wells in the various oil producing fields within this State.

All oil which plaintiff thus gathers within the State of Mississippi for transportation is consigned for shipment to destinations outside of the State either by trunk pipe line, or by railroad tank cars. Crude oil is a lawful article of commerce, and in the transportation of said oil plaintiff operates oil pipe-lines, called gathering lines, some of which lines run from the lease tanks situated at or near producing wells in the various fields to railroad tracks, where the oil is flowed into tank cars for shipment, while other gathering lines run from lease tanks into other pipe lines, designated as trunk pipe lines, which carry the oil across the State and out of the State and into the State of Louisiana. Oil gathered and transported through said trunk pipe lines is in continuous transit and without interruption in interstate commerce. The oil which is transported from the lease tanks to the various railroads for shipment by tank cars is likewise transported in continuous transit in interstate commerce, as more fully hereafter set out.

IV

The gathering system in each of the fields consists of lines [fol. 3] of pipe extending from a central or main line to lease tanks which are located in the immediate vicinity of oil wells on various producing leases. As the oil field develops this gathering system expands, and lines are extended to lease tanks serving new wells. Some of these gathering system lead into trunk pipe lines which traverse the State, while others lead to loading racks at points on railroads.

The transportation and handling of said oil through said gathering lines to the said railroad loading racks and thence into tank cars only begins when said oil is to be shipped or transported out of the State, in interstate commerce. In all cases of such transportation there is a continuous movement of said oil from the said lease tanks to the ultimate out-of-state destination.

V

The defendant, by C. R. Gartin, Chief of Sales and Use Tax Division, under notice of December 10, 1946, made a proposed assessment against the plaintiff, alleging that the said plaintiff owed sales taxes for the years 1944, 1945 and for the period from January 1 to June 30, 1946, aggregating $20,296.36; and a proposed assessment was made against plaintiff for compensating, or use, taxes for the same period of time and which were included in said notice aggregating $5,030.27, making a total of sales and use taxes demanded by defendant of $25,326.63.

VI

The defendant made said proposed assessment under the alleged authority of Title 40, Chapter 3, Divisions 1 and 3, of the 1942 Code of Mississippi, officially designated as the Emergency Revenue Act of 1934, also known as the General Sales Tax Law, and the Use or Compensating Tax Law. Under the said laws the defendant has been exclusively vested with the legal authority for the enforcement of the provisions of the said laws and the assessment and collection of said sales taxes and use taxes.

VII

The plaintiff thereafter on December 18, 1946, within the [fol. 4] period of time authorized by law, filed its petition with the State Tax Commission of the State of Mississippi, wherein it applied for a hearing before said Tax Commission for the purpose of correcting or setting aside the said taxes assessed against it by the Defendant Commissioner. Thereafter a hearing was had before the State Tax Commission on the plaintiff's said petition on the 30th day of January, 1947, in the office of the Tax Commission, the said date for hearing having been agreed on between the parties, and on March 10, 1946 the said Tax Commission entered its order sustaining the said assessment of sales taxes and use

taxes against the Plaintiff, Interstate Oil Pipe Line Company, in the amounts as above set forth, aggregating $25,326.63. In its said order the Commission held that the gross income from gathering and transporting crude oil from lease tanks to railroads and loading aboard tank cars for shipment by railroad outside the State is derived from intrastate commerce and held that said income is subject to the sales tax and that material used in the construction and operation of such lines is subject to the compensating or use tax. However, it held that gross income from gathering and transporting crude oil from lease tanks to trunk pipe line systems and its transportation by said trunk pipe line systems to points outside the State is derived from interstate commerce and is not subject *ot* the sales tax and the material used therein is not subject *ot* the use tax. A certified transcript of the proceedings which were had by and before the defendant and State Tax Commission in connection with the said assessments and hearing is herewith filed as Exhibit 1 to this declaration and prayed to be taken as a part thereof. The Exhibits, A, B, C and D of the said petition filed with the State Tax Commission and constituting a part of Exhibit 1 show in detail the said sales and use taxes, which said Tax Commissioner and Tax Commission found to be due by Plaintiff, subject to an admittedly proper deduction thereafter made of $222.57.

[fol. 5] VIII

Plaintiff has exhausted its administrative remedy as provided by Title 40, Chapter 3 of the Mississippi Code of 1942, and plaintiff has now availed itself of the right to resort to this Court of law to recover from the Defendant Commissioner the said taxes. To prevent itself from suffering the severe penalties as provided by the laws for non-payment of said taxes, Plaintiff has paid to defendant the amount wrongly found to be due by the State Tax Commission as above set forth, aggregating $25,326.63, and upon making said payment the Plaintiff gave notice of Plaintiff's intention to immediately enter suit against the Defendant in the proper Court for the recovery of said payment, according to the laws of Mississippi. A true copy of the transmittal letter addressed to the defendant by Plaintiff in making the said payment is herewith attached as Exhibit 2, and the receipt from the State Tax Commission for said payment is

attached as Exhibit 3, and praped to be made a part hereof as fully as if incorporated herein.

IX

The business and activities of the Plaintiff in Mississippi are wholly and exclusively in interstate commerce. The said sales taxes, which have been assessed against Plaintiff and which have been paid under protest, and for which this suit is brought as above set forth, are based upon Plaintiff's gross income from performing the following services, to-wit: Gathering and transporting crude oil from lease tanks in certain oil fields in the State of Mississippi to points on railroads in Mississippi, and there loading said crude oil into tank cars, following which said tank cars were conveyed by the railroads to destinations outside the State of Mississippi, the whole being a continuous and uninterrupted movement in interstate commerce.

Plaintiff alleges that all of the said personal property for w which use taxes have been demanded and which have been paid under protest, and for which recovery is sought in this suit, is used in and about the operations, which are herein [fol. 6] outlines, for the gathering and transportation of crude oil, for which the sales taxes have been demanded as herein set forth.

X

The Plaintiff states that it alone has borne the burden of the taxes herein sued for and has not directly or indirectly collected said taxes or any part thereof from its customers. Plaintiff is therefore entitled in justice and good conscience to a refund or recovery of said taxes as herein prayed for, and is therefore the real and only party in interest in this suit.

XI

Plaintiff is engaged wholly and eexclusively in interstate commerce in the State of Mississippi, and is exempt from the alleged and purported assessment against it for said sales taxes by virtue of the special provisions of Section 10109, said Mississippi Code of 1942, a part of which is quoted as follows:

"There shall be excepted from the gross income used in determining the measure of the tax imposed in this

section so much thereof as is derived from business conducted in commerce between this State and other States of the United States or between this State and foreign countries which the State of Mississippi is prohibited from taxing under the Constitution of the United States of America."

XII

Plaintiff charges that the compensating or use taxes assessed against it as above set forth on the use of tangible personal property which is a necessary part of Plaintiff's gathering and transportation system, and which is used and consumed in the furtherance of interstate commerce, is exempt by virtue of the special provision of Section 10149, 1942 Code of Mississippi, a part of which we quote as follows:

[fol. 7] "On the use, storage, or consumption of tangible personal property used or to be used or consumed in the furtherance of interstate transportation or interstate commerce, or on the use, storage or consumption of any property owned, used or to be used or consumed which is not procurable in the ordinary channels of trade in the state of Mississippi."

XIII

Plaintiff says that not only are the said sales and use taxes assessed against it incorrect because they come within the statutory exemptions as set out above, but that said taxes are not assessable or collectible for the reason that all of Plaintiff's operations within the State of Mississippi are in fact interstate commerce. That the alleged sales taxes on its gross income from the transportation of crude oil within the State and the use of compensating taxes against the tangible personal property used in connection therewith are in violation of the Commerce Clause of the Constitution of the United States, Article 1, Section 8, Clause 3. That the said assessments against Plaintiff also are invalid and void because they contravene Article 14, or the Fourteenth Amendment to the Constitution of the United States, and also contravene Section 14 of the Constitution of the State of Mississippi and also Section 112 of the Constitution of the State of Mississippi.

XIV

Plaintiff charges that if the said General Sales Tax law and Compensating or Use Tax Law, which are incorporated in Title 40, Chapter 3, Vol. 7 of the 1942 Code of Mississippi, as amended by Chapter 262 of the General Laws of Mississippi for 1946, House Bill No. 311, are applicable to Plaintiff in the levy of the said sales taxes and use taxes, the said laws are void and of no effect because:

[fol. 8] A. The said taxes, if applied against the Plaintiff under the facts as herein set forth, impose a license on interstate commerce.

B. The imposition of such taxes places a burden on Plaintiff's privilege of carrying on interstate commerce.

C. The imposition of such taxes constitutes a direct burden on the transportation of crude oil, a lawful article of commerce, wholly and exclusively in interstate commerce.

D. The imposition os such taxes against the Plaintiff is a tax directly on interstate commerce, or on the privileges or right to engage wholly and exclusively in interstate commerce.

E. The imposition of such taxes against the plaintiff is an attempted regulation of interstate commerce.

F. The imposition of such taxes against the Plaintiff is an attempt to usurp the powers which have been delegated to the Congress of the United States by the Constitution of the United States.

XV

Plaintiff herewith charges that neither the said sales taxes nor use taxes which have been assessed against it is above set forth, and which have been paid under protest, and refund of which is demanded in this suit, are due, nor should have been Collected, or should now be retained by the State of Mississippi, for the reason that Plaintiff's operations in the gathering and transporting of said crude oil from the producing leases to the loading racks on the railroad and the loading into the railroad tank cars for continuous transportation out of this State is interstate transportation, or interstate commerce. That the tangible property used in connection with, or for the purpose of, said interstate trans-

portation of crude oil is therefore used and consumed in the furtherance of interstate commerce. All oil gathered by the Plaintiff in the State of Mississippi is consigned for shipment to destinations outside of the State, and the gather-
[fol. 9] ing and loading aboard tank cars of such crude oil are covered by interstate tariffs, which are regularly filed by the Plaintiff with the Interstate Commerce Commission.

XVI.

That for the reasons above set forth the Plaintiff has been improperly charged with said sales taxes and use taxes and required to pay the same, and under the law of the State may recover the amount paid, together with interest in a proper action or suit against the Defendant Commissioner, and to this end, Plaintiff invokes the jurisdiction of this Circuit Court and states that the Defendant owes the Plaintiff the said amount which the plaintiff has heretofore paid for said sales taxes and use taxes above set forth amounting to $25,326.63, and for which amount the Plaintiff has made demand of the defendant, which Defendant has refused to pay and continues to refuse to do so.

Wherefore, Plaintiff brings this suit and demands judgment against the Defendant for the full sum of $25,326.63, with interest and costs.

P. H. Hunter, J. L. Seger, Walter D. Davis; Jas A. Alexander, Attorneys for Plaintiff.

[fol. 10]: EXHIBIT 1 TO DECLARATION

Jackson, Mississippi,
December 10, 1946.

Interstate Oil Pipe Line Company, National Bank of Tulsa Building, Tulsa 2, Oklahoma.

Attention: Mr. P. H. Hunter.

GENTLEMEN:

Thank you for your letter of December 4th which was written in response to our letter of November 25th and which had further reference to the assessment of sales and use taxes made by our auditors.

We are still unable to agree with your conclusion that the materials used in constructing your telephone lines are exempt from the provisions of our Use Tax Law. Since the figures shown in our audit reports as adjusted by the changes agreed to in our letter of November 25th appear to represent the correct amount of tax involved as agreed in your letter of December 4th, we believe that it is now proper that we make final determination based on these figures and to make the assessment final. We are therefore enclosing copies of these final assessments, and this letter is sent to you under registered mail in order to comply with the provisions of the law which require that you be given registered notice and demand to pay this tax within ten days from the date of this registered letter.

We are setting out below the periods covered by these assessments and the amounts shown due for each of these periods:

Sales tax calendar year 1944	$ 4,510.99	
Sales tax calendar year 1945	10,262.48	
Sales tax January 1 to June 30, 1946	5,522.89	$20,296.36
Use tax Calendar year 1944	1,017.84	
Use tax calendar year 1945	3,532.12	
Use tax January 1 to June 30, 1946	480.31	5,030.27
Total sales and use tax		$25,326.63

[fol. 11] You expressed a desire that this matter might be expedited as soon as possible. We agree that this should be done. In order that there may be no further delay, we suggest that you forward your remittance for the amount of these assessments so that you may be in position to enter suit for refund of the amount of taxes paid and thereby bring the matter before the courts for review.

[fol. 12] We understand that any suit brought by you to recover payment of these taxes will be brought in a friendly spirit. We assure you that we feel the same way about it. It is always a matter of regret when we are unable to agree with our friends in the matter of their tax liability. It is entirely proper when these disagreements arise that the matter be brough- before a court of competent jurisdiction

so that we may all know how to handle such matters in the future.

Sincerely, C. R. Gartin, Chief, Sales & Use Tax Division.

CAG:Mc.

Encls.

cc: Mr. Walter D. Davis, Millsaps Building, Jackson, Mississippi; Alexander and Alexander, Capitol National Bank Building, Jackson, Mississippi.

[fol. 13] PETITION BY INTERSTATE OIL PIPELINE COMPANY FOR HEARING IN RESPONSE TO ALLEGED INCORRECT ASSESSMENT OF SALES TAX AND USE TAX

To the Honorable A. H. Stone, Chairman of State Tax Commission of the State of Mississippi, and Commissioner in Charge of Administration of Sales Taxes and Use Taxes Within the State of Mississippi:

The petition of Interstate Oil Pipe Line Company, hereafter referred to as "Petitioner", respectfully represents:

Under date of December 10th, 1946, Petitioner was assessed with Sales Tax and Use Tax, as set in the registered notice of said assessment from C. R. Gartin, Chief, Sales and Use Tax Division, and which assessments are therein stated to be:

Sales Tax calendar year 1944	$ 4,510.99	
Sales tax calendar year 1945	10,262.48	
Sales tax January 1 to June 30, 1946	5,522.89	$20,296.36
Use tax calendar year 1944	1,017.84	
Use tax calendar year —	3,532.12	
use tax January 1 to June 30, 1946	480.31	5,030.27
Total sales and use tax		$25,326.63

In response to said assessment, Petitioner herewith files this petition in writing alleging that the said returns and assessments are incorrect, and the alleged taxes are not due, and it herewith respectfully asks that the Commissioner shall grant a hearing on this petition and investigate the question

[fol. 14] fully before proceeding further, and in support of which Petitioner alleges:

The Petitioner, Interstate Oil Pipe Line Company, is a Corporation chartered under the laws of the State of Delaware and duly qualified as a foreign corporation to do business in the State of Mississippi, and is a common carrier engaged in the business of transporting crude oil for various [fol. 15] shippers for hire. Petitioner does not purchase crude oil within the State of Mississippi, and, therefore, all oil which it gathers within the State of Mississippi is tendered for shipment by owners or purchasers of the said crude oil at the lease tanks in the various producing fields within the State. All oil which Petitioner gathers in the State of Mississippi is consigned for shipment to destinations outside of the State, either by trunk pipe line, if available, or by railroad tank car. The gathering and transportation of such oil, either by trunk pipe line where the same is available, or by gathering and loading said oil aboard tank cars, is solely and entirely interstate commerce. Petitioner is, therefore, an interstate carrier, duly licensed by the Interstate Commerce Commission, and all of its transportation of oil is covered by interstate tariffs which are regularly published and filed with the said Interstate Commerce Commission.

At the present time all oil being gathered by Petitioner in the State of Mississippi is now moving out of this state by trunk pipe line except oil transported from Pickens and Heidelberg-Eucutta Fields. The assessment of the sales tax by Commissioner against Petitioner as above set forth, aggregating a total of $20,296.36, represents taxes which are alleged to be due by Petitioner on the gross transportation income collected by Petitioner for transporting oil at the following times and places as shown by the itemized statements attached hereto as Exhibits A and B.

The assessment of the Use Tax as above set forth, aggregating $5,030.27, is alleged to cover taxes due by Petitioner on tangible personal property acquired and used within this State for the time at the following places, as shown by itemized statements of invoices covering said personal property as shown by Exhibits B and C hereto. The amount of Use Tax shown by said statements, however, has been reduced to $5,030.27, by an admittedly proper deduction of $222.57.

[fol. 21]

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SUBSTITUTED BY AGREEMENT IN LIEU OF EXHIBITS "A", "B", "C", AND "D" ATTACHED TO ORIGINAL PETITION

INTERSTATE OIL PIPE LINE COMPANY

	Sales Tax Due Intrastate				Use Tax Based on Delivery Point			
	1944	1945	1/1–6/30/46	Total	1944	1945 1/1–6/30/46	Total	
Cranfield	$ 444.76	766.08	.....	1,210.84	(34.54)	$ .51	$ (34.03)	Refund
Pickens	2,073.47	2,144.50	924.50	5,142.47	220.62	102.12	322.74	
Eucutta	568.38	3,958.92	2,355.29	6,882.59	132.65	426.30	558.95	
Heidelberg	1,417.43	3,223.04	2,233.61	6,874.08	1,949.43	2,278.44	4,227.92	
Mallalieu	6.95	30.51	.....	37.46	—0—	14.96	14.96	
Gwinville	.....	139.43	9.49	148.92	—0—	.3	.03	
Waynesboro	.....	.....	.....	.....	173.13	.97	174.10	
Noble	.....	.....	.....	.....	40.82	.06	40.88	
Hiawanee	.....	.....	.....	.....	36.31	3.06	39.39	
Jackson	.....	.....	.....	.....	1.18	—0—	1.18	
Lagrange	.....	.....	.....	.....	.....	3.11	3.11	
Fayette	.....	.....	.....	.....	.....	3.35	3.35	
McComb	.....	.....	.....	.....	.....	10.69	10.69	
Washington	.....	.....	.....	.....	.....	1.56	1.56	
Brookhaven	.....	.....	.....	.....	.....	993.52	993.52	
New Hebron	.....	.....	.....	.....	.....	156.79	156.79	
Laurel	.....	.....	.....	.....	.....	.59	.59	
Liberty	.....	.....	.....	.....	.....	35.67	35.67	
Gloster	.....	.....	.....	.....	.....	(19.30)	(19.30)	
Refund paid on pipe for Trunk Line	.....	.....	.....	.....	(1,501.81)	.....	(1,501.81)	
Total	$4,510.99	$10,262.48	$5,529.89	$20,296.36	$1,017.84	$4,012.43	$5,030.27	

NOTE.—All income on oil handled through Trunk Line has been eliminated from these figures in computing sales tax.

17

[fol. 22] TRANSCRIPT OF ORDER, STATE TAX COMMISSION, JACKSON, MISSISSIPPI

Office State Tax Commission Mar. 10, 1947.

STATE OF MISSISSIPPI,
County of Hinds, ss:

Be it Remembered That on the date stated above the State Tax Commission of said state adopted an order which was in words and figures as follows, to-wit:

In the Matter of the Petition of the INTERSTATE OIL PIPE LINE COMPANY for Revision of Sales Tax and Use Tax Heretofore Assessed for the Period January 1, 1944, to June 30, 1946

The above styled cause came on for final determination on this the 10th day of March, 1947, pursuant to a hearing before the Commission by the taxpayer, Interstate Oil Pipe Line Company on January 30, 1947, as shown by an order entered on pages 1 and 2 of this Minute Book, and by said order continued to a future date for further consideration by the Commission of the questions presented for decision.

The Commission has studied the evidence as set forth in the records, being the various tax returns filed by the said Company and other facts of record in the several tax reports of the said company, and has also considered the brief as filed by the attorneys for the said company. After a full and careful study and consideration of all pertinent evidence and the brief of the attorneys, the Commission is of the opinion that the said taxpayer, interstate Oil Pipe Line Company, is liable for, and should pay, the sales tax and use tax heretofore assessed by the Commissioner in the sum of $25,326.63, for the period from January 1, 1944, to June 30, 1946, as stated in detail in the Order of this Commission dated January 30, 1947.

The Commission finds that the admitted facts are that the Interstate Oil Pipe Line Company operates numerous gath- [fol. 23] ering lines in the State of Mississippi which are used to gather oil from individual oil producing wells and to convey it from the wells through the pipe lines of the said company by two general methods. First, oil gathered from individual wells and carried through the pipe lines of said

company directly and without interruption out of the State of Mississippi and into the State of Louisiana, to an oil refinery located at Baton Rouge, Louisiana. Second, oil gathered from individual wells and transported through the pipe lines of said company to several points on railroads, known as loading stations, located in this state, where the oil is transferred from the pipe lines of said company to tank cars on the railroad, and from there shipped by the owner of the oil to points outside the State of Mississippi by rail.

The Commission finds that the business of the company as stated in the first operation is interstate in character, and has been properly excluded from the gross income included in the measure of the tax. The Commission finds that the second operation is intrastate in character, and the transportation of oil by pipe line from individual oil wells to railroad stations in this state for reshipment to points outside of the state by rail, is intrastate business, and the gross income derived therefrom is to be included in the measure of the tax.

The commission finds that the business of the Company in moving the commodity here under consideration from the point of production to the railroad station located in this state for reshipment, is a simple intrastate operation, regardless of whether or not the oil is ultimately to be shipped in interstate commerce. The sole connection of the company with the commodity is to carry it from the place where it is produced to a railroad where it is loaded into tank cars for reshipment.

SECRETARY'S CERTIFICATE

I, A. S. Coody, Secretary of the State Tax Commission [fol. 24] of the State of Mississippi, so hereby certify that the above and foregoing is a true and correct copy of an order adopted by the said Commission on the date therein stated as the same appears of record in Minute Book — at Page —, an official record in said office and in my official care and custody.

Witness my signature this the — Day of ——, 194-.

——— ———, Secretary, State Tax Commission.

[fol. 25] TRANSCRIPT OF ORDER, STATE TAX COMMISSION, JACKSON, MISSISSIPPI

Office State Tax Commission, —— —, 194-

STATE OF MISSISSIPPI,
County of Hinds, ss:

Be It Remembered That on the date stated above the State Tax Commission of said state adopted an order which was in words and figures as follows, to-wit:

2

The Commission finds that the merchandise purchased from out of state vendors by the company and used on their pipe lines, in which pipe lines the company moves oil from the individual oil producing well to points on railroads within the state, is subject to the provisions of the Mississippi Use Tax Law, since such pipe lines are deemed to be used in intrastate commerce. The Commission finds that such merchandise is not used or consumed in the furtherance of interstate transportation or interstate commerce.

It is, therefore, ordered and adjudged that the petition of Interstate Oil Pipe Line Company for revision of sales tax and use tax heretofore assessed by the Commissioner for the period January 1, 1944, to June 30, 1946, both dates inclusive, as set out in detail below, be and the same is hereby denied and overruled, and the judgment of the Commissioner be and is hereby sustained, and the petitioner, Interstate Oil Pipe Line Company, be and is hereby adjudged to be liable for sales tax and use tax as assessed for said period in the total sum of $25,362.63; and the decision of the Commissioner with respect thereto is hereby sustained, approved, and confirmed;

Sales Tax Calendar Year 1944	$4,510.99	
Sales Tax Calendar Year 1945	10,262.48	
Sales Tax January 1 to June 30, 1946	5,522.89	
		$20,296.36
Use tax Calendar Year 1944	1,017.84	
Use Tax Calendar Year 1945	3,532.12	
Use Tax January 1 to June 30, 1946	480.31	
		5,030.27
Total sales and Use Tax		$25,326.63

Ordered and adjudged this the 10th day of March, 1947.

[fol. 26] SECRETARY'S CERTIFICATE

I, A. S. Coody, Secretary of the State Tax Commission of the State of Mississippi, do hereby certify that the above and foregoing is a true and correct copy of an order adopted by the said Commission on the date therein stated as the same appears of record in Minute Book 5 at page 4 an official record in said office and in my official care and custody.

Witness my signature this the 11 day of March, 1947.

A. S. Coody, Secretary, State Tax Commission.

[fol. 27] EXHIBIT 3 TO DECLARATION

No. 34964

Series "E" Check $25,326.63

Field Auditor's Receipt

Mississippi State Tax Commission,
Jackson, Mississippi

Cash $——

Received of Interstate Oil Pipe Line Co., Tulsa, Okla.,

Street and No. City County

Twenty Five Thousand Three Hundred Twenty Six & 63/100 Dollars on account of Sales Tax, Jan. 1-1944 June 30, 1946—
(Kind of Tax)

Use Tax—1944-1946. Receipt is hereby acknowledged, payment by other than legal spoole Being Subject to Collection, of the Receipt From the Person Above of the stated amount for the account shown. This receipt is issued as evidence only of the payment of the amount stated.

A. H. Stone, Commissioner, By J. L. Buster, Agent for the Commissioner.

Date 3-24, 1947.

[fol. 28] EXHIBIT 2 TO DECLARATION

March 24, 1947.

Honorable A. H. Stone, Chairman of State Tax Commission and Commissioner of Sales and Compensating Taxes, Jackson, Mississippi.

DEAR MR. STONE:

In behalf of Interstate Oil Pipe Line Company we hand you herewith its check No. 2062 on The National City Bank of New York, Fifty-First Street Branch, payable to State Tax Commission, State of Mississippi, Jackson, Mississippi, in the sum of $25,326.63.

This sum is paid to you under protest and is to cover an assessment made by you against Interstate Oil Pipe Line Company for sales taxes for the calendar years 1944 and 1945 and for period from January 1 to June 30, 1946, aggregating $20,296.36, and for the compensating or use taxes for the same period of time, aggregating $5,030.27.

This assessment was made by you, or at your instance on December 10, 1946, and after a hearing before the State Tax Commission on the petition of the said Interstate Oil Pipe Line Company, the assessment was sustained by order of the State Tax Commission rendered on March 10, 1946, and as shown in the minutes of said Commission in Minute Book 5 at page 4.

Interstate Oil Pipe Line Company respectfully notifies you that suit will be instituted against you in the proper court to recover the amount paid as above set out, in full accord with the statutes made and provided for in such cases, on the ground that Interstate Oil Pipe Line Company is not liable for these taxes, or any part thereof.

Please acknowledge receipt of this payment.

Yours respectfully, Interstate Oil Pipe Line Company. By Jas. A. Alexander, Walter D. Davis.

[fol. 29] JAA:cm.

Enclosure.

cc: Walter D. Davis, P. O. Box 1115, Jackson, Miss.; P. H. Hunter, P. O. Box 1349, Tulsa, Okla.

(File endorsement omitted.)

[fol. 30] IN THE CIRCUIT COURT OF THE FIRST JUDICIAL DISTRICT OF HINDS COUNTY, MISSISSIPPI

[Title omitted]

PLEA TO DECLARATION—Filed May 16, 1947

Comes A. H. Stone, Chairman of the State Tax Commission, the defendant in the above-styled and numbered cause, by his attorney, and for plea to the declaration filed against him in said cause would respectfully show to the Court the following, to-wit:

I

It is admitted that the plaintiff is a corporation organized and existing under and by authority of the laws of the State of Delaware, and is duly qualified as a foreign corporation to do business in the State of Mississippi, and maintains in the City of Jackson, Hinds County, Mississippi its principal Mississippi Office in charge of its duly designated agent for service of process.

It is also admitted that the defendant, A. H. Stone is the duly and legally appointed, qualified and acting Chairman of the State Tax Commission of Mississippi, and is officially and legally designated the Commissioner charged with the duty of administering the so-called Sales Tax Law of Mississippi, and the Compensating or Use Tax Law of Mississippi, and charged with the duty of collecting the taxes imposed by said laws. And that the defendant's office is in the New Capitol Building in the City of Jackson, Mississippi.

II

The plaintiff, the Interstate Oil Pipe Line Company, is a common carrier, and at the time of the accrual of the taxes [fol. 31] which were demanded and paid, and for which this suit is filed for recovery thereof, was engaged in the business of a common carrier engaged only in the business of gathering and transporting crude oil for various shippers for hire, from the places of production in the state to places within the state where delivery was made to common carriers for transportation outside of Mississippi. And it is possible, and therefore neigher admitted nor denied that it operated under the jurisdiction of the Interstate Commerce Commission, and that the rates charged for th- service ren-

dered in the state were covered by tariffs which were regularly published and filed with the Interstate Commerce Commission. But defendant contends that even though it received oil only for transportation when said oil was consigned for shipment to points outside of the State of Mississippi, is not material for the purpose of this suit.

III

It may be true that all oil which the plaintiff gathered and transported within the state of Mississippi was tendered to it for shipment by the owner or purchasers of the crude oil at the lease tanks which were located at or near oil wells in the various oil producing fields within the State.

And it may be true that all oil which plaintiff gathered and transported within the State of Mississippi was ultimately consigned for transportation or shipment to destinations outside of the state either by trunk pipe line, or by railroad tank cars. But the defendant states that this fact is not material for the purpose of the legal question involved in this suit.

The defendant admits that crude oil is a lawful article of commerce, and in the transportation of said oil the plaintiff operated oil pipe lines called gathering lines, some of which lines ran from the lease tanks situated at or near producing wells in the various fields to railroad tracks where the oil is transferred into tank cars for shipment, and while it is true [fol. 32] that plaintiff ultimately constructed pipe lines designated as "trunk pipe lines," which carry the oil across the state lines and out of the State of Mississippi into the State of Louisiana, none of the tax demanded by the defendant and paid by the plaintiff was based upon any activity of the plaintiff where there was a continuous movement of the oil from the places of production through trunk pipe lines to points outside of the state. But the defendant denies that the oil transported from lease tanks to the various railroads for shipment by tank car was tran-ported in continuous transit in Interstate Commerce.

IV

Defendant admits that the gathering systems in each of the fields and maintained by the plaintiff consisted of lines of pipe extending from a central or main line to lease tanks which were located in the immediate vicinity of oil wells on

various producing leases. And the defendant admits that as the oil fields developed, the gathering system were expanded and lines were extended to lease tanks serving new wells. But it is denied that the gathering system which lead into trunk pipe lines which traverse state lines, were included in the operation of the plaintiff for which the tax was demanded and paid. But the tax demanded and paid was computed only upon the operation of the plaintiff in transporting the oil from the places of production to loading racks at points on the railroad where the oil was delivered to the common carrier for transportation out of the state. And it may be true that the oil transported through gathering lines to the railroad loading racks, thence into tank cars, only began when said oil was intended to be shipped or transported out of the state. But it is denied that all such cases of such transportation was a continuous movement of said oil from said lease tanks to ultimate out of the state destination.

[fol. 33]

V

It is true as alleged in the declaration that the defendant, by and through C. R. Gartin, Chief of the Sales and Use Tax Division, gave notice on December 10, 1946 of a proposed assessment against the plaintiff, alleging that the said plaintiff owed Sales Tax for the years 1944 and 1945 and from the Period January 1 to June 30, 1946, aggregating $20,296.36, and the proposed assessment was made against the plaintiff for Use or Compensation taxes for the same period of time and which were included in said notice, aggregating $5,030.27, making a total of Sales and Use Taxes demanded of $25,326.63.

VI

It is true that the defendant, through his duly constituted agent, made said proposed assessments under the authority of the law of the provisions of which said taxes were imposed. It is likewise true that under the provisions of said laws the defendant, as Commissioner, has the exclusive authority for the administration of said laws and the enforcement of the provisions thereof, and is charged with the duty of making the assessment and collecting the taxes imposed by said law.

VII

It is true that the plaintiff, on December 18, 1946, in response to said demands filed his pe-ition with the State Tax Commission for the purpose of correcting or *or* setting aside the said assessment, and prayed that the Commission determine that the objection to said assessments, as made by the Commissioner, should be sustained as incorrect, and it is likewise true that the hearing was granted on said pe-ition and was held on the 30th day of January 1947, in the office of the State Tax Commission, said date having been agreed upon by the parties, and that on March 10, 1946, the State Tax Commission entered its order as authorized by law, sustaining said assessments both for the Sales Tax demanded and the Use Tax demanded. And [fol. 34] it is likewise true that in the order of said Commission, it announced its conclusion that the taxes demanded both for Sales Tax upon the amount received for transporting the crude oil, being from lease tanks to railroads and loading ramps, constituted Intra-State Commerce exclusively; therefore, the taxes demanded were proper under the provisions of the law. And it is true that the Commission, by its order, adjudicated the facts that where the original movement of the oil through the gathering lines and was continuous through the trunk pipe lines owned by the plaintiff, and that their activity consisted of movement of oil from the point of origin within the state to the ultimate destination without the state, and the compensation received was for such continuous movement, then such activity was Interstate Commerce, and no taxes were demanded from the plaintiff on account of such activities. The Exhibits A, B, C and D, filed with the petition before the State Tax Commission, constituting a part of Exhibit I, correctly show a deduction of $222.57.

IX

The defendant denies, however, the allegation of paragraph 9 of the declaration. It being the contention of the defendant, as adjudged by the Tax Commission, that the activities of the plaintiff are wholly and exclusively in Intra-State Commerce. And the defendant likewise contends that both the Sales Tax and Use Tax collected from the plaintiff, which were paid under protest, were properly collected because the activity of the plaintiff within the

State on account of which said taxes were collected was wholly Intra-state Commerce, which fact made said taxes properly due and payable. And the contention of the plaintiff that such activity constituted Interstate Commerce is denied, since insofar as a connection with the plaintiff with such transportation, it was not continuous in Interstate Commerce, but wholly within the State of Mississippi, and therefore Intra-state Commerce.

X

It is not denied that the plaintiff has borne the burden of [fol. 35] the tax paid and that it had not directly or indirectly collected such taxes, or any part thereof, from its customers. But it is denied that the plaintiff was entitled to recover the taxes paid.

XI

The defendant admits that the quotation of Section 10,109 of the Acts of 1942, quoted in the eleventh paragraph of the declaration would exempt the plaintiff from the tax demanded, if the plaintiff's activity had been in Interstate Commerce, but it is denied that the plaintiff's activity was wholly or even partially in Interstate Commerce in the sense contemplated by said provisions of the law.

XII

It is admitted that the portion of Section 10,149 of the Acts of 1942 quoted in the declaration would exempt the plaintiff from the Use Tax demanded and paid if the activities of the plaintiff had been in Interstate Commerce, but it is denied that such activity was other than Intra-state Commerce, and therefore, said exemption provision does not apply to the activities of the plaintiff.

XIII

It is denied that the allegations of Section 13 are true that the taxes collected are incorrect as coming within the exemption provisions of the statute quoted, and it is the contention of the defendant that the plaintiff's activities and operations within the state for the period and under the circumstances set out in its declaration were wholly in Intra-state Commerce and not in Interstate Commerce as

alleged. And it is denied that the imposition of said tax under the facts in this case constitute violation of the Commerce clause of the Constitution of the United States, Article I, Section 8, Clause 3. And it is denied that said assessment against the plaintiff was invalid or improper as contravening Article 14 of the 14th Amendment of the Constitution of the United States, neither does it contravene [fol. 36] Section 14 of the Constitution of the State of Mississippi nor of Section 112 of the Constitution of Mississippi.

XIV

The defendant likewise denies generally, without setting up separately in detail the allegations of paragraph 14 of the plaintiff's declaration that the construction and application of the laws involved would make said laws void and of no effect.

XV

Defendant takes issue with the charge of plaintiff that neither the Sales Tax nor Use Tax demanded and paid were improperly collected, but admits that the plaintiff was authorized to bring this suit for the purpose of having this Court decide whether or not the action of the Commissioner in demanding the tax, and requiring payment thereof as confirmed and ratified by the whole Commission, was proper and correct interpretation and enforcement of the laws involved. And the defendant denies that because all the oil gathered by the plaintiff and transmitted from one point in the state to another point in the state, without further responsibility for said oil, constituted an activity in Interstate Commerce even though all of said oil was ultimately to be transported outside of the state.

XVI

The defendant admits that the plaintiff was authorized by law to file this suit, but of course denies the right of recovery of the amount sued for.

And of all of which the defendant puts himself upon the Country.

A. H. Stone, Defendant, by J. H. Sumrall, Attorney.

[File endorsement omitted.]

[fol. 37] IN THE CIRCUIT COURT OF THE FIRST JUDICIAL DISTRICT OF HINDS COUNTY, MISSISSIPPI

[Title omitted]

AGREED STATEMENT OF FACTS—May 16, 1947

The statement hereafter set out is agreed to by A. H. Stone, Commissioner of Sales Taxes and Compensating Taxes, for the State of Mississippi, hereinafter referred to as the Commissioner, represented by J. H. Sunrall, attorney for the State Tax Commission, and duly authorized, and by Interstate Oil Pipe Line Company, hereinafter referred to as the Company, represented by P. H. Hunter, J. L. Seger, Walter D. Davis, and James A. Alexander, counsel for the Company and duly authorized.

I

Said agreed statement is to be used in the trial of this cause before the Circuit Court of the First District of Hinds County, Mississippi, which is a suit by the Company against the Commissioner for the recovery of sales taxes aggregating $20,296.36 claimed by the Commissioner to be due for the assessment years 1944, 1945 and for the period from January 1 to June 30, 1946, and also for compensating, or use, taxes for the same period of time aggregating $5,030.27, said total sales and use taxes having been paid by the Company under protest on March 24, 1947, and with notice to said Commissioner of intention of instituting this suit for the recovery thereof.

II

This case may be tried on a date convenient to the Court and the parties hereto, to be hereafter fixed and agreed upon, in the Circuit Court of the First District of Hinds County, Mississippi, without a jury.

[fol. 38] III

The transcript of the proceedings before the Commissioner and the State Tax Commission as set out in Exhibit 1 to the Declaration herein is to be taken as part of this agreement as if incorporated herein. By agreement the condensed statement showing the total sales and use taxes involved in

this action is attached as the exhibit to the petition, in lieu of the statements which originally comprised Exhibits A, B, C and D to said pe-ition. The copy of transmitted letter in behalf of the Company to the Commissioner accompanying the payment of $25,326.63 of the said sales taxes, referred to in the Declaration as Exhibit 2, is herewith to be admitted as part of this agreement.

The receipt from A. H. Stone, Commissioner, by J. L. Brister, for the Commission, No. 34964 for the said sum of $25,326.63 in payment of said taxes under protest, which is referred to in the Declaration as Exhibit 3, is also admitted as part of this agreement. The entire record as made by the documents and papers in this cause, including the Declaration of the Company with Exhibits, together with the pleadings filed in behalf of the Commissioner, this Agreed Statement of Facts, and any other evidence that may be introduced at the trial hereof, is to be submitted to the Court on a hearing of this cause and considered on the trial of the issues made up therefrom.

IV

The Company is a corporation organized under the laws of Delaware.

The Company filed a copy of its Charter with the Secretary of the State of Mississippi and paid the required filing fees and was duly qualified to do business as a foreign corporation in the State of Mississippi on January 15, 1942. At this same time the Company designated and appointed a resident agent for service of process in the State of Mississippi as required by law. Such agent is J. H. Thompson, [fol. 39] who resides in and maintains an office in Jackson, Mississippi in said county and district.

V

A. H. Stone is the duly and legally elected, qualified and acting Chairman of the State Tax Commission of Mississippi, and is the official and legally designated Commissioner for the collection of sales taxes and compensating or use taxes in the State of Mississippi. His office is in the State Capitol in the City of Jackson, Mississippi, and he holds his said office and official position under and by virtue of the laws of the State of Mississippi.

The Company has paid for each of the years involved in

this action substantial amounts of franchise and income taxes to the State of Hississippi and has also paid ad-valorem taxes on its properties to said State and its local subdivisions.

VII

The Company is a common carrier engaged only in the business of gathering and transporting crude oil for various shippers for hire, and is an interstate carrier operating under the jurisdiction of the Interstate Commerce Commission, and all of its transportation of oil in Mississippi is covered by tariffs which are regularly published and filed with the said Interstate Commerce Commission.

VIII

During the period of January 1, 1944, to June 30, 1946 the Company had installed and operated gathering systems for the transportation of oil from the lease tanks situated at or near the oil wells in various fields in Mississippi to loading racks located adjacent to railroads as follows:

Cranfield Field, located in Adams County, Mississippi, with connecting lines to a railroad loading rack on the Mississippi Central Railroad at Noble, Mississippi

Eucutta and Heidelberg Fields, located in Wayne and Jasper Counties, Mississippi, with connecting lines to the railroad loading racks at Hiwanee, Mississippi on the Gulf, [fol. 40] Mobile & Ohio Railroad, and at Heidelberg, on the New Orleans and Northeast Railroad.

Gwinville Field, in Jefferson Davis County, Mississippi, with connecting lines to a railrooad loading rack at New Hebron, Lawrence County, Mississippi.

Mallalieu Field, located in Lincoln County, Mississippi, with connecting lines to a railroad loading rack at Brookhaven, Mississippi.

Pickens Field, located in Yazoo County and Madison County, Mississippi, with connecting lines to a railroad loading rack on the Illinois Central Railroad near Pickens, Mississippi.

Some of these gathering lines which were first connected with railroad loading racks as above set out were later connected with trunk pipe lines which were constructed in said

area, and the use of the railroad loading rack was discontinued in these cases. At the present time all oil gathered by the Company in Mississippi is moved out of the State by trunk pipe lines except that gathered in the Pickens and Heidelberg-Eucutta Fields, which is still being shipped out of the State of railroad. The sales taxes for which recovery is sought herein were paid on gross income for gathering and transporting to, and loading of oil on tank cars at, railroad loading racks in the various oil fields as shown by the Exhibit attached to the petition which was filed before the State Tax Commission and which is part of plaintiff's Exhibit No. 1 to the Declaration in the case.

Of the total use, or compensating, taxes in the amount of $5,030.27 for which recovery is sought herein, taxes of $4,362.75 were paid for the privilege of using tangible personal property in the construction and operation of pipe line gathering systems and loading racks which were used for gathering and transporting oil from lease tanks situated at or near the oil wells in the various fields set out herein (and on the Exhibit attached to and made a part of plaintiff's Exhibit No. 1 to the Declaration in this case) to loading [fol. 41] racks adjacent to railroads at the points indicated and for loading said oil aboard tank cars at said points for shipment by railroad to destinations outside the State of Mississippi. Use tax in the amount of $677.52 included in the amount of $5,030.27 assessed and paid under protest, recovery of which is sought herein, was paid for the privilege of using certain copper wire, glass insulators, fittings, hardware, brackets, lamps, screws and other supplies in constructing a telephone system in Mississippi. Said telephone system was constructed on or adjacent to the Company's interstate trunk pipe line right of way and was necessary to and used solely in connection with the dispatching and movement of interstate oil shipments and the servicing and maintenance of said interstate trunk line system.

All of the oil gathered, transported and loaded aboard tank cars with respect to which sales and use taxes were paid, recovery of which is sought herein, was consigned for shipment to destinations outside the State and was in fact transported by the railroads from points of loading to destinations outside the State of Mississippi in continuous interstate commerce.

IX

The Company does not purchase any crude oil in the State of Mississippi other than small quantities for fuel purposes incident to the operation of pumping machinery. It operates exclusively as a common carrier and transports oil for various shippers for hire. All oil which it gathers in the State of Mississippi is consigned for shipment to destinations outside the State, either by trunk pipe line or by railroad tank car. The gathering and transportation, where trunk line facilities are used, and the gathering and loading aboard tank cars, are covered by interstate tariffs which are regularly published and filed with the Interstate Commerce Commission. Attached hereto is company's tariff, published and filed with the Interstate Commerce Commission, pertaining to oil moved from the Pickens Field. Said tariff is representative of tariffs published and filed with [fol. 42] reference to the oil movements mentioned herein. All oil gathered and loaded aboard tank cars is tendered for shipment by the owner or purchaser at the lease tanks in the producing fields prior to the movement of the oil. The shipper furnishes the company a "ten-er of shipment" form for each shipment which specifies the quantity of oil to be moved, the origin and ultimate out-of-state destination, and the tariff under which the shipment is made. It also contains shipping instructions as to consignee, destination, route of shipment, etc. Representatives of this company, together with representatives of the producer or shipper, *guage* the oil in the lease tanks, run out the quantity designated, then again *guage* the lease tanks and jointly sign the "Run Ticket" showing opening and closing *guages* from which the quantity shipped is computed. The oil is then pumped into the main gathering line and thence to the loading rack, or working tanks adjoining the loading rack. When tank cars for the shipment have been spotted at the loading rack, they are loaded and Company representatives obtain from the railroad the bill of lading and other shipping papers covering the shipment, showing the consignor of the oil as shipper, with Company shown as agent of the shipper, and indicating thereon the destination previously specified by the shipper. For its services in gathering and loading the crude oil, Company is paid by the shipper at the rate per barrel stipulated in its applicable Interstate Commerce Commission tariff.

X

A pipe line gathering system consists of lines of pipe extending from a central or main line to connect with lease tanks located on the producing leases in the vicinity of the wells, and pumps to move oil from the lease tanks through the pipe lines to a main trunk pipe line or to a loading rack adjacent to a railroad.

The loading rack consists of a main pipe, or header, lying in or on top of the ground parallel to a railroad spur, with [fol. 43] smaller perpendicular lines welded thereto extending upward to the loading rack walkway. On top of these perpendicular lines are movable connecting joints, so places as to fit the intake valves of tank cars on the adjacent spur track. In loading tank cars the oil is pumped through the loading racks and into the intake valves of the cars by pumps operated by Company. In some instances small working tanks are constructed in connection with the loading racks to provide for accumulation of oil until tank cars for shipment have been spotted by the railroad. Oil is places in these tanks only to facilitate tank car loading operations, and remains ther in only until tank cars have been spotted in position for loading, usually a matter of only a few days and never more than a week. In some cases where production from a field is small, and other cases in order to conserve tank space and to eliminate double pumping, the oil may be pumped directly from the lease tanks into tank cars.

XI

The amount of sales taxes demanded by the Commissioner and paid by the Company, and which it is sought to recover by this suit, was computed only upon the amount of compensation received by the Company for transporting oil or petroleum products from the places of production in the State to the places in the State where deliveries were made to a railroad or other common carrier for transportation out of the State. And did not include any compensation received by the Company for transportation beyond the Boundaries of the State.

XII

The amount of compensation or use tax demanded by the Commissioner and paid by the Company, and which it is.

sought to recover by this suit, included only tax computed upon the purchase price of material brought from without the state, and brought into the state for use exclusively in their equipment used in transporting crude oil from the places of production in this state to the places in this state where it was delivered to a railroad or other common car-
[fol. 44] rier for transportation out of the state. And did not include any material used in the construction of facilities employed by the Company in transporting crude oil beyond the borders of the state exclusively through Company lines.

XIII

After the Company constructed its "trunk pipe lines" into the state, and transmitted continuously through its gathering system and trunk line crude oil from the places of production in the state to points beyond the state, no claim was made for taxes on any part of the compensation received for such transportation, such activity admittedly being Interstate Commerce, which fact exempted the Company from the sales tax upon the compensation received for such activity, as well as from the use tax upon the equipment purchased thereafter from without the state and brought into the state for use in the construction of the facilities with which the interstate movement was conducted.

XIV

The Commissioner claims authority to act under the provisions of Title 40, Chapter 3, Provisions 1 and 3 of 1942 Code of Mississippi, officially designated as the Emergency Revenue Act of 1934, and also known as the General Sales Tax Law, and the Use of Compensating Tax Law. The assessment made against Company for sales taxes and use taxes involved in this litigation is alleged to be accrued under and by virtue of this said law and covers the period of time from January 1, 1944 to June 30, 1946.

XV

Company has borne the burden of the taxes herein involved alone and has not directly or indirectly collected said taxes or any part thereof from its customers, and, therefore, is the real and only party having an interest in this suit.

XVI

This agreed statement of facts is intended to cover all of [fol. 45] the facts necessary for a proper determination of the issues involved in this suit, but said parties hereto reserve the right to amplify the statement by evidence of any additional facts that may be relevant to the cause, and that do not conflict with this agreed statement of facts.

Witness the signatures of the counsel for the parties, plaintiff and defendant, on this the 16th day of May, 1947.

J. H. Sumrall, Counsel for A. H. Stone, Chairman of State Tax Commission. P. H. Hunter, J. Seger, Jas. A. Alexander, Walter D. Davis, Counsel for Interstate Oil Pipe Line Company.

[fol. 45a] Exhibit to Agreed Statement of Facts

No supplement to this tariff will be issued except for the purpose of canceling the tariff unless otherwise specifically authorized by the Commission.

I. C. C. No. 41. Cancels I. C. C. No. 368. (Oklahoma Pipe Line Company Series.)

Interstate Oil Pipe Line Company

* Local Tariff

Applying on Crude Petroleum

The rates named in this tariff are subject to the Rules and Regulations published on page 2 hereof.

From: * Lease tankage within the territory of the Interstate Oil Pipe Line Company's gathering system in the Pickens Field, Yazoo and Madison Counties, Mississippi.

To: * Delivery point of the Interstate Oil Pipe Line Company on the Illinois Central Railroad near Pickens, Holmes County, Mississippi.

Gathering Rate in Cents Per Bbl. of 42 U. S. Gallons: 4.

Loading Charge: All crude petroleum required to be loaded into railroad tank cars or tank trucks at above destination will be subject to an additional charge of two cents (2c) per barrel.

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* Denotes changes in wording which result in neither increases nor reductions in charges.

Shipments gathered and transported under this tariff are entitled to such privileges and subject to such charges as are or shall be published by this Company and such as are lawfully in effect on date of shipment and lawfully on file with the Interstate Commerce Commission as to interstate traffic, providing for reconsignment, storage, transit privileges, or any other privileges, charges or rules which in any way increase or decrease the amounts to be paid on any shipment transported under this tariff, or which increase or decrease the value of the service to the shipper.

Issued January 2, 1945. Effective February 1, 1945.

Issued by Bruce Ramsey, Vice President, Interstate Oil Pipe Line Company, 921 National Bank of Tulsa Building, Tulsa, Oklahoma.

[fol. 45b] Regulations

This Company will receive crude petroleum, as herein defined, from lease tankage within the area of its gathering system, for transportation to destination named herein, for interstate transportation beyond, under the terms and conditions of the following rules and regulations.

1. Definition of Crude Petroleum:—The term "crude petroleum," as used in this tariff, means the direct product of oil wells or a mixture of the direct product of oil wells and the indirect petroleum products resulting either from refining crude petroleum or from the operation of gasoline recovery plants, gas recycling plants or distillate recovery equipment in gas and distillate fields.

2. Definition of Barrel:—By a barrel of crude petroleum, as used in this tariff, is meant forty-two (42) U. S. gallons at a temperature of sixty (60°) degree Fahrenheit.

3. Conditions Under Which Indirect Petroleum Products Will Be Received:—Indirect petroleum products will be received for gathering and transporting only on condition that they have been mixed with direct products of oil wells or on condition that they can be mixed with direct products of oil wells in the tanks or lines of this Company at the point offered, and provided that both the indirect products and the direct oil well products with which they are so mixed

are owned by the same shipper and are consigned to the same destination.

4. Right to Reject Shipments:—This Company reserves the right to reject any and all shipments of crude petroleum that have a Reid Vapor Pressure in excess of ten pounds (10#) at one hundred degrees (100°) Fahrenheit; also any and all shipments that contain basic sediment, water or other impurities, at a point four inches (4") below the pipe line connection, totalling in excess of one-half of one per cent (½ of 1%) as determined by the centrifugal test, or by such other tests as may be agreed upon by the shipper and this Company. This Company also reserves the right to reject any and all shipments where the shipper or consignee have failed to comply with all applicable laws, rules and regulations made by any Governmental authorities regulating shipment of crude petroleum or petroleum products.

5. Minimum Tenders and Acceptances:—Orders for the shipment of crude petroleum shall be submitted in writing on this Company's prescribed tender of shipment form. This company will receive for gathering and transporting all such crude petroleum tendered by the shipper individually or by him and others, provided it is of the same kind and quality, is consigned to the same point of delivery, is in the minimum quantity of ten thousand (10,000) barrels, and is of such grade as not to damage or change the characteristics of the common stock crude petroleum in the lines of this Company as said crude petroleum would pass through to destination; provided, however, that the shipper and this Company may agree for the gathering and transporting of crude petroleum, the characteristics of which differ from the common stock of crude petroleum in said lines.

6. Apportionment When Tenders Are in Excess of Facilities:—When pursuant to tenders hereunder there shall be offered to this Company more crude petroleum than can be immediately gathered and transported, the gathering and transporting shall be apportioned among all shippers in proportion to the rate at which deliveries are currently offered to this Company under tenders then in effect.

7. Liability of Pipe Lines:—This Company, while in possession of crude petroleum tendered under this tariff shall not be liable for any loss thereof, the damage thereto or

delay caused by fire, storm, flood, epidemics, act of God, riots, strikes, insurrection, rebellion, war, act of public enemy, quarantine the authority of law, requisition or necessity of the Government of the United States in time of war, default of shipper or owner, or from any other cause not due to the negligence of this company. In case of loss of any crude petroleum from any such causes, after it has been received for gathering and transporting and before the same has been delivered to consignee, shipper shall stand a loss in such proportion as the amount of his shipment, already delivered to this Company, bears to all of the crude petroleum then in the custody of this Company for shipment via the lines or other facilities in which the loss or damage occurs, and the shipper shall be entitled to have delivered only such portion of his shipment as may remain after deduction of his due proportion of such loss, but in such event shipper shall be required to pay charges only upon the quantity of crude petroleum delivered.

8. Destination Facilities:—Crude petroleum will be received for gathering and transporting only when the shipper or consignee has provided the necessary facilities for receiving said crude petroleum as it arrives at destination.

9. Identity of Oil:—Crude petroleum will be accepted for gathering and transporting only on condition that it shall be subject to such changes in gravity or quality while in transit as may result from the gathering and transporting thereof or mixture of said crude petroleum with other crude petroleum in the pipe lines or tanks of this Company. Unless so required by Agreement entered into between the shipper and this Company, as provided for in Regulation 5 hereof, this Company shall be under no obligation to make delivery of the identical crude petroleum received but reserves the right to make delivery out of its common stock of substantially like kind and value.

10. Crude Petroleum Involved in Litigation:—Crude petroleum, which is in any way involved in litigation, or which is encumbered by a lien or charge of any kind, will not be accepted for gathering and transporting unless and until the shipper or consignee shall furnish a bond or other form of indemnity satisfactory to this Company, protecting it against any liability or loss arising as a result of such litigation, lien or charge.

11. Payment of Tariff Charges:—The shipper or consignee shall pay all lawful tariff charges accruing on crude petroleum delivered to and accepted by this Company for shipment, and, if required, shall pay the same before delivery at destination. Crude petroleum accepted for gathering and transporting shall be subject to a lien for all such charges and said lien shall attach to any crude petroleum not yet delivered to destination for all unpaid charges arising hereunder on crude petroleum covered by the same tender.

12. Claims, Suits and Time for Filing:—As a condition precedent to recovery, claims must be filed in writing with this Company, within nine (9) months after delivery of the property; or, in case of failure to make delivery, then within nine (9) months after a reasonable time for delivery has elapsed; and suits shall be instituted against this Company only within two (2) years and one (1) day from the day when notice in writing is given by this Company to the claimant that this Company has disallowed the claim or any part or parts thereof specified in the notice. Where claims are not filed or suits are not instituted thereon in accordance with the foregoing provisions, this Company shall not be liable and such claims will not be paid.

13. Gaging, Testing and Deductions:—Crude petroleum tendered to this Company for gathering and transporting shall be gaged and tested by a representative of this Company prior to its receipt from the shipper, but the shipper shall have the privilege of being present or represented at the gaging and testing. Quantities shall be computed from correctly compiled Tank Tables on a one-hundred per cent (100%) volume basis. Crude petroleum of required specification will be received and delivered corrected as to temperature from observed degrees Fahrenheit to sixty degrees (60°) Fahrenheit, on the basis of National Bureau of Standards Abridged Volume Correction Table for Petroleum Oils, Supplement to National Bureau of Standards Circular C-410, issued April 20, 1937, (A. S. T. M. Designation: D-206-36; A. P. I. Standard No. 500). A centrifuge machine or other methods agreed upon shall be used for ascertaining the percentage of basic sediment, water or other impurities in the crude petroleum and the full amount of basic sediment, water, and other impurities shall be deducted from the cor-

rected volume. The net balance at sixty degrees (60°) Fahrenheit will be the quantity deliverable by this Company and tariff charges will be assessed in accordance therewith.

14. Evidence of Receipts and Deliveries:—Crude Petroleum received and delivered on tenders shall be evidenced by run tickets, Receipt/Delivery tickets, Bills of Lading or Loading Reports showing gages, temperatures, basic sediment and water, gravity and any other data essential to the determination of quantity and quality. Representatives of the shipper and consignee are privileged to witness the sampling, gaging and testing of the crude petroleum if they so elect.

[fol. 46] IN THE CIRCUIT COURT OF THE FIRST JUDICIAL DISTRICT OF HINDS COUNTY, MISSISSIPPI

[Title omitted]

PETITION FOR APPEAL—Filed July 31, 1947

Comes Interstate Oil Pipe Line Company, plaintiff, by its attorneys of record, and herein petitions for an appeal to the Supreme Court of Mississippi from the judgment entered herein dismissing plaintiff's suit, and files herewith an appeal bond without supersedeas, as provided by law.

For Petitioner, Interstate Oil Pipe Line Company, by Jas. A. Alexander, Attorney.

[File endorsement omitted.]

[fol. 47] IN THE CIRCUIT COURT OF THE FIRST JUDICIAL DISTRICT OF HINDS COUNTY, MISSISSIPPI

No. 11941

INTERSTATE OIL PIPE LINE COMPANY

vs.

A. H. STONE, Chairman State Tax Commission

ORDER DISMISSING DECLARATION—July 28, 1947

This cause having been set for hearing in vacation, by agreement of the parties, and an order entered in term time fixing the date for vacation hearing as July 21, 1947; and said cause having been continued from said date by

agreement of counsel for the respective parties until July 22, 1947, and came on for hearing on said day; and the Court having heard and considered the pleadings filed on behalf of the Plaintiff and defendant and the agreed statement of facts signed by the respective attorneys for the plaintiff and the defendant, and a stipulation whereby a jury was waived; and after having heard and considered the arguments and briefs of counsel for the respective p-rties, the Court took the Cause under advisement for further consideration and judgment in vacation.

The Court now being fully advised in the premises, and being of the opinion that the plaintiff is not entitled to recover the amount sued for, nor, nor any amount, doth order and adjudge as follows, to-wit:

That the plaintiff take nothing by its suit.

And that the declaration of the plaintiff be and the same is hereby dismissed at the cost of the plaintiff. For all of which let execution issue.

Ordered and adjudged this the 28th day of July, A. D., 1947.

H. B. Gillespie, Circuit Judge.

M. B. 27—page 392

[fol. 48] [File endorsement omitted]

IN THE SUPREME COURT OF MISSISSIPPI

[Title omitted]

ASSIGNMENT OF ERRORS—Filed September 20, 1947

Comes the appellant, Interstate Oil Pipe Line Company, and assigns as error on the part of the Circuit Court of the First Judicial District of Hinds County, State of Mississippi, for which appellant seeks a reversal of the judgment rendered against it in said court and a final judgment in its favor in this Court, the following:

The Court erred in not holding:

(1) That the gross income of appellant, Interstate Oil Pipe Line Company upon which sales taxes were paid and for refund of which this suit was brought, was excepted from the gross income used in determining the measure of

the tax imposed by Section 10109 of the Mississippi Code of 1942, by reason of the fact that said gross income "was derived from business conducted in commerce between this State and other States of the United States which the State of Mississippi is prohibited from taxing under the Constitution of the United States of America."

and

(2) That the use, storage or consumption of the tangible personal property by appellant, within this State upon which use or compensating taxes have been paid and for refund of which this suit was brought, was exempt from [fol. 49] tax by the provisions of Section 10149 of the Mississippi Code of 1942 by reason of the fact that said personal property was "used or consumed in the furtherance of interstate transportation or interstate commerce;"

and

(3) That if the General Sales Tax Law and the Compensating or Use Tax Law, which are incorporated in Title 40, Chapter 3, Volume 7, of the 1942 Code of Mississippi, as amended by Chapter 262 of the General Laws of Mississippi for 1946, House Bill No. 311, are applicable to Appellant's activities as set out in this suit, then said laws are void and of no effect by reason of the fact that they are in conflict with Article I, Section 8, Clause 3, of the Constitution of the United States, known as the Commerce Clause.

Respectfully submitted: J. L. Seger, P. H. Hunter, F. R. Clark, Jr., James A. Alexander, Walter D. Davis.

A copy of the above and foregoing Assignment of Error has this day been mailed, postpaid, to J. H. Sumrall, attorney for A. H. Stone, Chairman State Tax Commission, appellee, this 19 day of September, 1947.

(S.) James A. Alexander, Of Counsel for Appellant.

[fol. 50] IN THE SUPREME COURT OF MISSISSIPPI

In Banc:

No. 36,672

INTERSTATE OIL PIPE LINE CO.

vs.

A. H. STONE, Chairman State Tax Commission

OPINION—Filed April 26, 1948

McGEHEE, J.

This is a suit wherein the appellant Interstate Oil Pipe Line Company seeks a refund of taxes in the sum of $25,326.63 which it paid on March 24, 1947, to the appellee A. H. Stone, Chairman of the State Tax Commission, for the period from January 1, 1944, to June 30, 1946, inclusive.

During the period aforesaid the appellant, a Delaware corporation which had qualified to do business in this State, owned and operated several pipe line systems for gathering crude oil from tanks on producing leases in numerous oil fields in Mississippi and transporting the same to some local shipping point on a nearby railroad where the same was in each instance transported in due time by the railroad company to an out of state destination.

The pipe line systems, respectively, consisted of pipes extending from a central or main line so as to connect with the oil tanks located on producing leases in the vicinity of the wells and thence to the loading racks or stations of the pipe line company adjacent to the railroad. At the oil tanks near the producing wells there were pumps installed by said com- [fol. 51] pany with which it pumped the oil from the tanks into its pipe line and then to the railroad, where it again pumped the same from its loading racks or tanks into the railroad tank cars as soon as such cars were "spotted" for that purpose.

The pipe line company made one charge of a few cents per barrel for pumping the oil from the lease tanks at the oil fields into its pipe line and thence to the railroad shipping point, the amount received for such service depending upon the distance to the railroad from each oil field, and then a

separate and additional charge of two cents per barrel for pumping the same from its loading racks or tanks, into the railroad tank cars. Of course, it received no part of the charges collected by the railroad company for transporting the oil across the state line to its destinations. In fact, it had no contractual relation with the railroad company in connection with the latter's said interstate transportation of such oil.

The privilege tax for operating these pipe line systems for transporting the oil from one point to another in this State as well as the Use tax on the use of the tangible personal property used in connection therewith were collected pursuant to assessments made after proper notices given and hearings had thereon in compliance with due process of law. The liability therefor is contested by the pipe line company on two grounds: (1) It contends that Sections 10105 and 10109, Code 1942, under which $20,296.63 of the amount involved was paid as a privilege tax for operating the pipe lines for transporting crude oil from one point to another in this State, and also Sections 10148 and 10149, Code 1942, [fol. 52] under which the remaining $5,030.27 was paid as a Use tax on its tangible personal property used in the operation of the pipe lines contain express exemptions against liability therefor under the admitted facts of the case; and (2) that the taxpayer's transportation of the oil was in interstate commerce, and that, therefore, the imposition of both of the taxes here in question violates the commerce clause of the Constitution of the United States, Article I, Section VIII, Clause 3 thereof, without regard to the alleged statutory exemption claimed in each instance.

The case was heard in the Circuit Court upon the pleadings and an agreed statement of the facts as to the method aforesaid whereby the business of the taxpayer was conducted in this State, and also as to the circumstances hereinafter mentioned under which it procured and brought into this State the tangible personal property used in the construction and operation of its pipe lines; and with the result that the trial court denied liability for the refund of all the taxes in question.

We are of the opinion that the Court was correct in disallowing a refund of the tax in the sum of $20,296.36, which had been collected for the privilege of operating the pumping machinery and other pipe line equipment in the trans-

portation of oil in the manner hereinbefore set forth, but that the Court was in error in disallowing a refund of the Use tax of $5,030.27, for reasons hereinafter stated.

We shall discuss the question of liability for these taxes respectively in reverse order. Section 10148, Code 1942, assesses and levies "a tax or excise for the privilege of use, * * *, of any article of tangible personal property" in this State, equal to 2% of the purchase price thereof; [fol. 53] and Section 10149, Code 1942, provides that "the tax levied by this act shall not be collected in the following instances: * * * (d) On the use * * * of tangible personal property used * * * in the furtherance of interstate transportation or interstate commerce, or on the use, * * * of any property * * *, which is not procurable in the ordinary channels of trade in the State of Mississippi * * *. And Section 10146, Code 1942, relating to this Use tax recites, among other things, that "the primary purpose of which (the statute) is hereby declared to be the imposition of a tax for the privilege of using, * * *, tangible personal property; * * *, and to protect, insofar as may be proved practicable, the merchants, dealers, manufacturers and persons engaged in businesses of rendering services in Mississippi, who operate under the privilege tax laws of this State, who pay the taxes imposed thereby, and who meet the requirements of the Mississippi sales tax laws, against the unfair competition of importation of goods and services into Mississippi without the payment of the retail sales tax imposed for the sale of goods, wares and merchandise usually carried for sale in this State, * * *."

It is agreed that $4,362.75 of the $5,030.27 was paid for the privilege of using tangible personal property in the construction and operation of the pipe line gathering system hereinbefore mentioned, and that the remaining $667.52 was paid for the privilege of using certain copper wire, glass insulators, fittings, hardware, brackets, lamps, screws, and other supplies in constructing a telephone system adjacent to *an interstate trunk pipe line* right-of-way separate and apart from the oil gathering pipe line systems herein- [fol. 54] before mentioned, and that the same was necessary to and used solely in connection with the *dispatching and movement of interstate shipments* and the servicing and maintenance of its said *interstate trunk line system.*

It is further agreed that the total amount of the said Use tax was computed and paid upon the purchase price of ma-

terial brought from without the State by the pipe line company "and that none of said property was available for purchase from stock piles in the State, but that all such materials were procurable from sales agents then operating in the State, who might have forwarded orders to suppliers located outside the State for shipment by said suppliers to appellant in Mississippi"; and from this factual situation we are asked to determine the question of whether or not such property was "procurable in the ordinary channels of trade in the State of Mississippi," and also whether or not the same was used "in the furtherance of interstate transportation or interstate commerce" by the pipe line company.

We do not think that the fact that such materials were procurable through sales agents then operating in the State who could have forwarded orders to outside manufacturers or dealers meant that such materials were "procurable in the ordinary channels of trade in the State of Mississippi." If merchants, dealers, manufactures and others engaged in businesses in this State could not supply the demand for this material, then there could be no "unfair competition" with them by non-residents engaged in manufacturing and selling the same, since the taxpayer had to resort to placing orders through such sales agents in the State to procure [fol. 55] the materials from manufacturers or dealers outside thereof. We are therefore of the opinion that under Section 10149 there could be no liability in the instant case for the Use tax whether the property was used "in the furtherance of interstate transportation or interstate commerce" or not, since the statute by its very language provides that the tax shall not be collected *either* on the use of tangible personal property used "in the furtherance of interstate transportation or interstate commerce" *or* on the use of such property "which is not procurable in the ordinary channels of trade in the State of Mississippi."

Except for the agreed statement of facts to the contrary, we would naturally assume that the enumerated articles for the use of which the said $667.52 was paid were procurable in the ordinary channels of trade in the State of Mississippi. However, that fact becomes immaterial here for the reason that it is further agreed, as hereinbefore shown, that such supplies were used in connection with the operation of *an interstate trunk pipe line* of the appellant taxpayer whereby it transported oil from the tanks on producing

leases on its ultimate and final passage from this State into other states in interstate commerce, such trunk line being operated entirely separate and apart from the oil gathering systems involved herein for transporting oil from one point to another in this State.

And referring further to the remaining $4,362.75 of the Use tax which was paid for the privilege of using the tangible personal property in the construction and operation of the oil pipe line gathering systems for transporting oil from one point to another in this State, it should be noted that aside from the fact that said property was "not pro-[fol. 56] curable in the ordinary channels of trade in the State of Mississippi" the same was *at least* used "in the furtherance of interstate transportation or interstate commerce" in which the railroad companies were engaged when transporting the oil on its ultimate journey from the local shipping points and cross the State line to its out-of-state destinations.

And now passing to the exemption claimed for the privilege taxes of $20,296.36 levied and collected for operating the pipe lines for transporting the oil from one point to another in this State, we find that Section 10105, Code 1942, levies annual privilege taxes, measured by the amount or volume of business done, on the basis of 2% of the gross income therefrom, or gross proceeds of sales, as the case may be, as follows: (1) Upon every person engaging or continuing within this State in the business of mining, etc., levied by Section 10106, of said Code; and (2) on every person engaging or continuing within this State in the business of manufacturing, etc., levied by Section 10107, of said Code; (3) on every person engaging or continuing in this State in the business of selling any tangible property whatsoever, real or personal, (not including, however, bonds or other evidence of indebtedness, or stocks) levied by Section 10108 of said Code; and (4) upon every person engaged or continuing within this State in the business of operating certain other public utilities, including those "operating a pipe line for transporting from one point to another in this State oil * * * through pipes or conduits in this State," levied by Section 10109 of said Code.

In the latter Section, which is now under consideration, there is included a tax on those operating numerous other public utilities insofar as the business done by them from [fol. 57] one point to another in this State is concerned, the

tax in each instance being measured by 2% of the gross income of such intrastate business. They too have paid ad valorem, franchise and other taxes paid by this pipe line company in addition to the privilege tax levied by the statute here involved.

And Section 10109, supra, expressly excepts from the gross income of all these public utilities, used in determining the measure of the tax, so much thereof as is derived from commerce between this and other States, "which the State of Mississippi is prohibited from taxing under the Constitution of the United States of America."

By the above exception the Legislature seems to have recognized that many of the utilities enumerated in said Section of the Code are engaged in both intrastate and interstate commerce, that all activity in the State having a relation to interstate commerce is not exempt from bearing its share of local taxation by the commerce clause of the Federal Constitution, and by thus excepting from the gross income used in determining the measure of the tax so much thereof as is derived from business conducted in commerce between this and other States "which the State of Mississippi is prohibited from taxing under the Constitution of the United States of America" it was made known that it was not the purpose of the Legislature to attempt to burden interstate commerce *as such* by the levy of a tax measured by a percent of the gross income derived therefrom.

It is the uniform rule laid down by all of the Courts that tax exemption statutes should be strictly construed and that when any doubt arises as to whether or not an exemption is granted by such statute the doubt must be resolved against [fol. 58] the exemption. The citation of authorities in support of this principle is deemed unnecessary.

It is to be conceded, however, that in considering the privilege tax imposed by Sections 10105 and 10109, supra, here in question, which as a matter of convenience and best available means of fixing the amount thereof is to be measured by a percent of the gross income of the business done by the taxpayer, any reasonable doubt as to whether or not the business done by the taxpayer can be detached in its main and essential feature as a local activity must be resolved in favor of the taxpayer in connection with the said requirement that when the taxpayer is relying upon an exemption the claim of non-liability is to be clearly sustained under the proven facts in the light of the burden of proof

resting upon the taxpayer to establish that the case comes within such exemption.

If the exemption was intended to apply under the facts of the instant case, then the levy of the tax on the privilege of operating a pipe line for the transportation of oil from one point to another in the State could have served no useful purpose, since it was known that all of the oil transported by pipe line from producing leases or elsewhere would be transported to destinations outside the State either by interstate trunk pipe lines, on a continuous journey, or likewise by railroad from local shipping points within the State. If by the former method, it would of course constitute that character of commerce "which the State of Mississippi is prohibited from taxing under the Constitution of the United States," and this would be equally true as to the movement [fol. 59] by rail of oil from a local shipping point to its destination outside the State in crossing the state line. Hence, the statute was designed only for the purpose of taxing the privilege of operating a pipe line for transporting the oil from one point to another in the State where it is then delivered to an interstate carrier prior to the beginning of its ultimate passage to a foreign state in interstate commerce. Most assuredly, no pipe line company would be deemed justified in installing an oil gathering system to transport oil other than that destined for ultimate interstate shipment, there being no oil refineries here.

During the period for which these taxes were collected, the taxpayer as heretofore stated was transporting some oil from within the State to outside destinations by an interstate trunk pipe line, and subsequent to the expiration of the said two and a half year period in question it has transported practically all of the oil handled by it for the owners and shippers thereof by means of oil tank pipe lines to out of state destinations, and for which particular activity no tax has ever been demanded or collected. The entire tax collected, and for which a recovery is sought herein was measured by a per cent of gross receipts of the business done in transporting oil from one point to another in this State through its local oil gathering systems and for loading the same into railroad tank cars as hereinbefore described. Therefore, it appears that insofar as its own activities in that regard and the services of its employees in this State in that behalf were concerned, this pipe line company was an intrastate carrier. It transported no oil across the State

line in the operation of such local pipe lines, that is to say, the essential and controlling feature of its business from which the tax in question was collected was the transporta-
[fol. 60] tion of oil from one point to another in intrastate commerce. It was not employed or hired to transport oil to any destination outside the state, but only to transport the same to the railroad and then pump it into the railroad tank cars as a local activity, insofar as the right of taxation of its privilege of operating the intrastate pipe line is concerned.

It is agreed that the said taxpayer received the oil at the leased tanks at or near the place of production under a "tender of shipment" from the owner, supplied by the taxpayer, which showed the consignee and ultimate destination thereof to be outside the State, etc., and it thereafter obtained for such owner from the railroad company a bill of lading at the time the same was delivered to such interstate railroad carrier. But "it is not within the power of the parties by the form of their contract to convert what is exclusively a local business, subject to state control, into an interstate business, protected by the commerce clause". 11 Am. Jur. p. 29. And to the same effect is the rule announced in 15 C. J. S. p. 278. In other words, neither the form of contract nor method of billing is controlling on the question of whether the pipe line company was employed to do more than render a local service for the owner of the oil by pumping the same out of the lease tanks and through its pipe line to where it could be later pumped and loaded by said company into the railroad tank cars to be started on its ultimate interstate passage.

In 51 Am. Jur., Section 205, page 266, it is said: "It is generally held that a movement merely in preparation for export—in other words, a mere transfer of the property to a
[fol. 61] depot or other place within a state from which the transportation or journey to another state is to begin at a convenient time—is not a part of that transportation, so as to exempt the property because of such transfer movement from state taxation upon the ground of the interference or burden upon interstate commerce." Numerous authorities are cited to support this announcement, including the case of Coe v. Errol, 116 U. S. 517, 29 L. Ed. 715, wherein the Court said: "But this movement (in interstate commerce) does not begin until the articles have been shipped or started for transportation from the one State to the other. The

carrying of them in carts or other vehicles or even floating them to the depot *where the journey is to commence*, is no part of that journey * * *. Until actually launched on its way to another state or committed to a common carrier for transportation *to such state*, its destination is not fixed and certain. It may be sold or otherwise disposed of within the state and never put in course of transportation out of the State. Carrying it from the farm or the forest to the depot is only an interior movement of the property entirely within the state, for the purpose, it is true, but only for the purpose, of putting it into a course of exportation; it is no part of the exportation itself. Until shipped or started on its final journey out of the state, its exportation is a matter altogether in fieri and not at all a fixed and certain thing." (Italics ours) Here the oil was not committed by the owner to this pipe line company for transportation to another state, but to be transported to the railroad and there loaded into tank cars.

In the instant case, the owner of the oil could have directed the pipe line company as its agent to divert the pro-[fol. 62] posed shipment from its intended out-of-state destination and caused it to be shipped to the Gulf Coast of the state, to be sold there, or so as to otherwise prevent its interstate transportation, and to obtain a bill of lading to that end, instead of procuring for the owner a bill of lading to the originally contemplated out-of-state destination, and this could have been done without working a breach of the tender of shipment under which the pipe line company had received the oil, since the interest of the said pipe line company, unlike that of the railroad company, could not be affected one way or the other by the diverting of the shipment, for the reason that the pipe line company was to receive no part of the charges to accrue after the oil was loaded into railroad tank cars for its final destination.

The said tender of shipment provided, among other things, that the "crude petroleum accepted for gathering and transporting shall be subject to a lien for all such (tariff) charges (for transporting the oil to the railroad and loading the same), and said lien shall attach to any crude petroleum not yet delivered to destination for all unpaid charges arising hereunder on the crude petroleum covered by the same tender".

It is to be conceded that the lien above mentioned, as well as the local activities of this taxpayer in the operation of

its pipe line for transporting oil from one point to another in this State, together with its tangible personal property employed in the operation of said business, enjoys the protection of the state laws. Also, that the particular tax here under consideration is not a tax on a commodity in transit. Nor is it a direct tax upon such gross receipts. It is a tax on the local business of operating the pipe line, and as here-[fol. 63] tofore stated the amount thereof is measured by 2% of the gross receipts derived therefrom, as a matter of convenience. That is to say, it is merely a tax on the privilege of engaging in a local activity insofar as this taxpayer was concerned. Moreover, it is not measured by a percent of the entire gross income received from the transportation of the oil from the tanks on the producing leases to its out of state destination, since the gross income received by the railroad company for transporting the oil on its ultimate journey beyond the State in interstate commerce is no part of the measure of the tax.

It may be also conceded for the purpose of this decision, but without admitting that the pipe line company is engaged in interstate commerce, that there is no appreciable interruption at the railroad shipping point in the continuity of the transportation of the oil from the tanks on the producing oil leases to its out of state destinations, though it is pumped from said tanks to the railroad under a tender of shipment, furnished to the owner by the pipe line company, to where it reaches the loading racks or stations on the railroad and is thence later, as soon as cars arrive, shipped by rail out of the State under a bill of lading obtained from the railroad company by the pipe line company as agent of the owner of such oil.

In the case of Stone *v.* Memphis Natural Gas Co., —— Miss. ——, 29 So. (2d) 268, this Court upheld "a franchise or excise tax" levied and assessed by Section 9314, Code 1942, against the said gas company, a Delaware corporation which had not even qualified to do business in this State, and where the stipulation of facts stated that the said "appellee company is not, and has not been, engaged in any intrastate commerce in Mississippi, but that its business, so far as concerns this State, has been interstate solely and ex-[fol. 64] clusively; that it has only one customer in the State, and to this customer it delivers gas wholesale, under a contract made in another State."

The said gas company then owned and operated a natural gas pipe line running from the Monroe gas field in Louisiana to Memphis, Tennessee, and beyond, entering Mississippi south of Greenville and extending for a distance of approximately 135 miles through this State, along which line it maintained two compressing stations in this State. The contention made in that case was that no tax of any kind could be levied by the State of Mississippi against the pipe line company other than the ad valorem taxes which it had already paid, and that any other tax, and particularly a franchise tax, would be to tax interstate commerce.

While the tax upheld in that case was a franchise tax as distinguished from the privilege tax involved in the case at bar, it was nevertheless a tax on the right and privilege of exercising its corporate powers and enjoying the protection of the state laws in the use and maintenance of its property for the conduct of its business, and we are of the opinion that what was said by the court in sustaining the tax was in keeping with the modern trend of the decisions of the Supreme Court of the United States upon the right of a State to require one whose property and business enjoys the protection of local laws to bear its proper share of the expense of the State government, where the tax is non-discriminatory and does not constitute a *direct* burden on interstate commerce; and of which modern trend we have ample evidence in what was said in the case of McGoldrick *v.* Berwind-White Coal Co., 309 U. S. 33, 84 L. Ed. 565, even though the factual situation in that case was likewise different to that involved in the case at bar.

[fol. 65] In this connection we said in the case of Stone *v.* Memphis Natural Gas Co., supra.

"It is to be seen that there is no attempt to tax interstate commerce as such, but the levy is an exaction which the State requires as a recompense for its protection of lawful activities carried on in this State by the corporation, foreign or domestic, activities which are incidental to the powers and privileges possessed by it by the nature of its organization—here the local activities in maintaining, keeping in repair, and otherwise in manning the facilities of the system throughout the 135 miles of its line in this State." We then cited Stone *v.* International Natural Gas Co., 308 U. S. 522, 84 L. Ed. 442; Stone *v.* General Contract Purchase Corp., 193 Miss. 301, 312, 7 So. (2d) 806; and Stone *v.* General Elec-

tric Contracts Corp., 193 Miss. 317, 7 So. (2d) 811; and further observed that:

"It has often been observed in times past that interstate commerce should pay its way, should be made to bear a fair share of the cost of local government whose protection it enjoys, but outside of ad valorem taxes and until recently most efforts to make it pay its way have met with failure. In late years, however, there is a tendency to uphold local taxation when it does not bear directly upon interstate commerce as commerce, or when indirect, it had no substantial effect to block or impede the free flow of such commerce.

"And more recently there has been a pronounced trend that, in order to make a more reasonable accommodation between local needs and the dominant requirement of freedom in the national commerce, recognition shall be given to [fol. 66] a rule as follows: That although a particular activity may be essential to the continued full and unimpeded flow of commerce between the states as regards a particular commodity or other matter of such commerce, yet if that activity is of a substantial character, and is one which actually and distinctly happens in the particular State and must be, and is, protected by that State regardless of the ultimate purpose of the activities, then for the purpose of laying a tax as a recompense for the local protection afforded, the State may detach the activity so long as the exaction on account of it is not made a pretext to impose a burden which would have the effect, beyond that which is remote or unsubstantial, to interfere with the national interests."

The fact that the imposition of a state tax adds to the cost of interstate commerce is not alone sufficient to invalidate the tax as an interference with that commerce. 51 Am. Jur., Sections 203, 207; pp. 264, 270, citing McGoldrick *v.* Berwind-White Coal Mining Co., supra, and other cases, among which is the case of Colverdale *v.* Arkansas-Louisiana Pipe Line Co., 303 U. S. 604, 82 L. Ed. 153.

In the case of Dunston *v.* City of Norfolk, 15 S. E. (2d) 86, (Va.), the Court said:

"Finally, the Supreme Court of the United States has declined to deny to the States the right to levy a tax upon interstate commerce merely because it is such commerce. The latest cases recognize and admit the right of the States to require such commerce to bear its fair share of the cost of local government, notwithstanding the fact that the exercise of such right may, in some measure, affect the com-

merce or increase the cost of doing business. They declare that the purpose of the commerce clause is to allow inter-[fol. 67] state commerce to compete on a fair and equal basis with local commerce. * * *

"The change of interpretation thus evidenced was more fully enlarged and amplified, in 1940, in the three cases of McGoldrick *v.* Berwind-White Coal Mining Company, 309 U. S. 33, 60 S. Ct. 388, 84 L. Ed. 565, 128 A. L. R. 876; and McGoldrick *v.* Felt & Tarrant Manufacturing Company and McGoldrick *v.* Du Grenier, Inc., 309 U. S. 70, 60 S. Ct. 404, 84 L. Ed. 584, sometimes referred to as the New York City Sales Tax Cases."

The general rule is announced in 51 Am. Jur., Sec. 204, p. 264, that "the commerce clause of the Federal Constitution affords immunity to property from local taxation when, but only when, it is in transit as interstate or foreign commerce," citing Champlain Realty Co. *v.* Brattleboro, 260 U. S. 366, 67 L. Ed. 309, and numerous other cases. But here the tax is not on any property in transit as interstate commerce or otherwise, but it merely on the privilege of operating a pipe line wholly within this State as a local activity. It is not on the owner or shipper of the oil. Nor is it a direct tax on the gross receipts from either the activity of the pipe line company or the interstate transportation by the railroad company, but rather a tax on the privilege of doing an intrastate business, and measured by a percent of gross income as a matter of convenience. It only indirectly affects the commerce.

Moreover, the tax would be equally applicable to a domestic or foreign corporation engaged in such activity or in transporting oil by pipe line from tanks on producing leases to an oil refinery, should there be one in the State, whether [fol. 68] the oil was ultimately transported in interstate commerce or not, and therefore the taxing statute in no manner discriminates against interstate commerce, and it only incidentally and indirectly affects the same.

In McGoldrick v. Berwind-White Coal Mining Co., supra, the Court said: "Forms of state taxation whose tendency is to prohibit the commerce or place it at a disadvantage as compared or in competition with intrastate commerce and any state tax which discriminates against the commerce, are familiar examples of the exercise of state taxing power in an unconstitutional manner, because of its obvious regulatory effect upon commerce between the states. But it was not the

purpose of the commerce clause to relieve those engaged in interstate commerce of their just share of state tax burdens, merely because an incidental or consequential effect of the tax is an increase in the cost of doing the business . . . Not all state taxation is to be condemned because, in some manner, it has an effect upon commerce between the states, and there are many forms of tax whose burdens, when distributed through the play of economic forces, affect interstate commerce, which nevertheless falls far short of the regulation of the commerce which the Constitution leaves to Congress."

We quoted the above language with approval in Stone v. General Electric Contracts Corp., 193 Miss. 317, 7 So. (2d) 811. In that case we also cited State of Wisconsin v. J. C. Penney, 311 U. S. 435, 85 L. Ed. 267, wherein it was said: "A state is free to pursue its own fiscal policies, unembarrassed by the Constitution, if by the practical operation of a tax the state has exerted its power in relation to opportuni- [fol. 69] ties which it has given to protection which it has afforded, to benefits which it has conferred by the fact of being an orderly, civilized society."

We are of the opinion that the case of Carson Petroleum Co. v. Vial, 279 U. S. 95, 73 L. Ed. 626, and other similar cases such as those reviewed in the annotation contained in 171 A. L. R. at page 283, et seq., and some of which are relied upon by the appellant, are to be distinguished from the instant case in that they involve only the question of whether or not a property tax—for ad valorem purposes—could be imposed upon a commodity which is temporarily interrupted in transit for a change in the mode of transportation and where the same does not remain in the taxing state long enough to acquire a situs therein for ad valorem taxation purposes. They do not involve the right of the State to exact a tax upon the *privilege of engaging in the local activity* of rendering services wholly within the taxing state for hire, such as operating pumping machinery and pipe lines for the transportation of commodities from one point to another in the State.

Moreover, in the Carson Petroleum Company case, supra, the oil was purchased outside of Louisiana, shipped into that state to a storage place and was awaiting the arrival of ships for its transportation to foreign countries. There was no question about the property being in transportation

in interstate commerce and the ad valorem tax sought to be assessed was against the owner of the oil where the same remained at the storage place only long enough for a change in the mode of transportation, and for an insufficient time to acquire a situs in Louisiana for ad valorem taxation [fol. 70] purposes.

The Court decisions, state and federal, cited both on behalf of the taxpayer and the Tax Commission are too numerous for discussion and analysis in an opinion of justifiable length, but we think that when each of them are viewed in the light of their particular facts it will be found that the more recent cases sustain the view that the commerce clause of the Federal Constitution does not deny to the State the right to tax the privilege of engaging in a local activity such as is here involved.

The decision of the trial court will, therefore, be affirmed wherein it upheld the tax collected for operating the pipe lines in question and reversed wherein it upheld the Use tax on the use of the property employed in the operation of said pipe line business, and a judgment here will be entered accordingly.

Affirmed in part, reversed in part and judgment accordingly.

Alexander, J. took no part in this decision.

[File endorsement omitted.]

[fol. 71] IN THE SUPREME COURT OF MISSISSIPPI

In Banc:

No. 36,672

INTERSTATE OIL PIPE LINE CO.

vs.

A. H. STONE, Chairman State Tax Commission

OPINION OF GRIFFITH, J., DISSENTING IN PART—Filed April 26, 1948

Under the precise facts as disclosed by this record I am of the opinion that all the activities here in question were interstate in character and that none of the tax here sought

to be imposed could be lawfully collected. The authorities which support that view will appear in the reporter's abstracts and will not be further referred to here.

Smith, L. A., Sr., J., concurs in this dissent.

[File endorsement omitted.]

[fol. 72] IN THE SUPREME COURT OF MISSISSIPPI

No. 36,672

INTERSTATE OIL PIPE LINE CO.

vs.

A. H. STONE, Chairman etc.

JUDGMENT—April 26, 1948

This cause having been submitted at a former day of this term on the record herein from the Circuit Court of Hinds County and this court having sufficiently examined and considered the same and being of the opinion that there is partial error therein doth order and adjudge that the judgment of said Circuit Court rendered in this cause on the 28th day of July 1947, be and the same is hereby affirmed wherein it upheld the tax collected for operating the pipe lines in question and reversed wherein it upheld the Use Tax on the use of the property employed in the operation of said pipeline business. It is therefore ordered and adjudged that judgment of said lower court is hereby affirmed insofar as it denied recovery of the tax collected for operating the pipe lines in question but reversed as to the other feature and this court now here proceeding to render and enter the judgment that should have been entered in the court below doth order and adjudge that the appellant, Interstate Oil Pipe Line Company do have and recover of and from A. H. Stone, Chairman State Tax Commission the sum of $5,030.27 the amount of the Use tax paid under protest together with interest thereon at the rate of 6 per centum per annum from the date paid under protest to the date of its payment to the appellant. It is further ordered and adjudged that the costs of the Clerk of this court be paid out of the appropriation provided for cases in which the State Fails.

[fol. 73] [File endorsement omitted]

IN THE SUPREME COURT OF MISSISSIPPI

[Title omitted]

SUGGESTION OF ERROR BY APPELLEE—Filed May 25, 1948

I consider the majority opinion rendered in this cause, with reference to liability of the appellant for the Sales Tax paid on its activity within the state in transporting oil by pipe line from one point in the state to another point in the state, as eminently correct. But the reason given for holding that the amount of the Use Tax paid was not due will be very harmful, being based upon a construction of the law which is contrary to the uniform construction placed upon said statute by the Commissioner. Although this construction, by the Commissioner, has been uniformly acquiesced in by all persons to which said statute applied, for the more than six years that the law has been in force. And the effect that said construction is having on pending claims for Use Tax, as well as the indicated claims for refunds that will be filed for Use Tax already paid, if said rule announced by this Court is maintained, is of such vital importance to the state and will affect the finances of the state to such great extent in the future, by reason of the inability of the Commissioner to collect Use Taxes, as well as the enormous claims that will be filed for the taxes already collected, prompts me to suggest to the Court [fol. 74] that the basis of the decision with reference to Use Tax is erroneous, and should be either set aside or amended so as to avoid the dire consequences which are bound to result if such language of the Court is allowed to remain in force.

I make specific reference to the language of the Court which is as follows:

> "We do not think that the fact that such materials were procurable through sales agents when operating in the State who could have forwarded orders to outside manufacturers or dealers meant that such materials were 'procurable in the ordinary channels of trade in the State of Mississippi'."

The language of the statute construed, which is Subsection (d) of Section 4 of the Code "which is not procurable in the ordinary channels of trade in the State of Mississippi" was intended to cover such tangible property as would not be purchased by the ordinary citizen or business conducted in the State, in such quantities as to justify the stocking of such merchandise in advance of orders therefor. Indeed, the language was used for the express purpose of indicating that any article not usually carried in stock in this state, would yet be taxable for its use within the state, if the usual or customary channels or methods by which such articles were procured were available, even though the nature of such articles was such that it would not be practicable to attempt to *to* anticipate certain wants and have on hand the merchandise with which to fill any order or request for articles the nature of which did not permit the keeping thereof in stock to supply the peculiar desires of potential purchasers.

[fol. 75] There are numbers of agencies within the state, some of which are representatives of manufacturers, and others being agents who have qualified as dealers in the products of certain manufacturing plants, for the sale of equipment and articles which are peculiar to the operation in oil fields. And I am informed from various sources that it is a fact that the character and varying conditions necessary to proper equipment for oil operations, at least, are so varied that no effort is made for stocking in any quantity the various materials required in the operation of oil production. And no independent dealer in such commodities ever attempts to keep in stock, either in this state or anywhere else, a sufficient variety and quantity of the various materials used in oil production, except the mills where such materials are manufactured. Indeed, I understand that the regular business of selling "Drilling Rigs" contemplates and requires the placing of orders by the seller with many different manufacturers who produce separately derricks, drill stems, drills, pumps of various kind, and the many other accessories which combine to make a complete drilling rig. I am informed that in some instances orders would have to be placed with at least twenty different manufacturers to procure all the material necessary to furnishing a drilling rig. And yet, there are many agencies in Mississippi who will accept

orders for and supply a complete drilling rig to any purchaser thereof.

In view of the fact that the term "procurable in the ordinary channels of trade" seems to have been an expression coined by the Legislature for the expression of its own intention, and there are no cases in the books where the phrase, as a whole, has ever been construed, by the Courts or the text writers, it is necessary to analyze the term in order to ascertain the legislative intent.

In Webster's New International Dictionary, the term [fol. 76] "ordinary" is defined as "belonging to what is usual; having or taking its place according to customary occurrence or procedure; usual; normal."

In "Words and Phrases", Volume 30, there are a number of decisions cited in explanation of the meaning of the word "ordinary". For instance, in the case of Central Hannover Bank & Trust Company v. Nisbet, 186 A. 643, the Supreme Court of Connecticut defined the word in the following language:

> "The word 'ordinary' means common, customary, usual."

In the case of Zulich v. Bowman, 42 Pac. 83, and in the case of State v. O'Connor, 49 Me. 594, the word was defined as follows:

> "The word 'ordinary,' a synonym of 'regular' is defined by Webster as methodical, regular, according to established order."

There are numerous other cases cited which give the composite definition of the word "ordinary" as "methodical, regular, according to established order, common, usual, often recurring."

It is manifest, therefore, since all of the cases in the books have a uniform definition of the word "ordinary", that the Legislature used said word in its usual sense. And it is only necessary then to define the additional word of "channel". And the word "channel" has been variously defined in the several text books as follows:

> "The term 'channel' has been said to be a generic term, and its truest meaning depends upon the context in which it is used. Usually meaning a direction of course or means by which something is conveyed,

[fol. 77] as the channel of a stream; the means by which news is conveyed, or any other process by which movement is controlled or regulated".

The natural conclusion to reach, therefore, is that the Legislature used said phrase for the purpose of excluding from the property the use of which is taxable when brought into the state, only such articles as are so seldom used or purchased for use in this State that there are no means or agencies through which same might be procured. The expression generally used by the Commissioner in defining said term being "locomotives, brass cannons, steam ships" and other articles, the use of which in the State of Mississippi would not be anticipated, would be the only items which are intended to be excluded from taxable property brought into the state, which in the ordinary course of events would never be desired to purchase by a person within the State of Mississippi.

The Mississippi Use Tax Law is to all intents and purposes identical with the similar law of the State of Iowa. The Iowa statute expresses the thought intended to be conveyed by the phrase "not procurable in the ordinary channels of trade", by the term "not ordinarily obtainable in Iowa", and this term has been construed by the Supreme Court of Iowa in the case of Peoples Gas & Electric Company v. State Tax Commission, reported in 28 NW (2d) at page 799. The Iowa statute likewise contains a provision authorizing the Commissioner to promulgate rules and regulations for the purpose of defining certain terms and supplying the definition in the language of the statute itself, in determining its specific meaning.

In construing said provision of the Iowa Law, the Supreme Court of Iowa in the Peoples Gas & Electric Company case, supra, stated that the use of the phrase was [fol. 78] intended to distinguish certain materials from the "materials and equipment not manufactured or stocked in Iowa which were of a character not to be regularly stocked in Iowa, but which were regularly sold by Iowa dealers as a normal part of their business".

And this further language of the Iowa Court in said case fully explains the sense in which the language contained in the Mississippi statute and the Iowa statute of similar import, is intended to cover. The Iowa Court used the following language in holding that certain property was tax-

able when brought into the state, although not regularly carried for sale in the state, but said that the tax would apply to:

> "Materials and equipment not stocked in Iowa, when factory branches, resident agents or salesmen, or jobbers or dealers in Iowa were regularly engaged in selling the same or comparable materials and equipment in Iowa as a normal part of their business".

The development of oil production in Mississippi has brought about this exact situation, which is covered by the language of the Iowa Court last quoted. There are at least ten or more of the principal manufacturers of oil field equipment who have established branch offices, and appointed qualified agents within the State of Mississippi, for the express purpose of accepting orders for the various kinds of equipment necessary in drilling for oil and handling oil after same is produced. But none of said agencies or dealers undertake to keep in stock the vast amount of materials of such variety and bulk to be able to supply orders for large quantities of such equipment which may become necessary to be used in the oil operations in Mississippi.

Many of the dealers and agencies now operating in Mis- [fol. 79] sissippi for the sale of oil field equipment are Mississippi dealers who have qualified to sell supplies necessary in the increasing operation of oil industry in Mississippi, and all of such dealers accept orders to be filled in the same manner as orders are filled when produced by the branch offices of manufacturers of such commodities now operating in Mississippi. And to hold that all such properties may be shipped into the state on orders procured in the state, or which are not carried in a stockpile within the state, free of tax, would be to discriminate against the local dealers who have uniformly paid the Sales Tax on such property as they have accepted order for, as a local dealer, even though shipment and delivery may be made from the mills without the state where all such orders are filled, without reference to whether the order is taken by a permanent dealer within this state, or by a traveling representative of a manufacturer who has no place of business within this state.

In the opinion of this Court it is stated:

> "If merchants, dealers, manufacturers and others engaged in businesses in this State could not supply the

demand for this material, then there could be no 'unfair competition' with them by nonresidents engaged in manufacturing and selling the same, since the taxpayer had to resort to placing orders through such sales agents in the State to procure the materials from manufacturers or dealers outside thereof. We are therefore of the opinion that under Section 10149 there could be [fol. 80] no liability in the instant case for the Use Tax whether the property was used "in the furtherance of interstate transportation or interstate commerce" or not, since the statute by its very language provides that the tax shall not be collected *either* on the use of tangible personal property used 'in the furtherance of interstate transportation or interstate commerce' *or* on the use of such property 'which is not procurable in the ordinary channels of trade in the State of Mississippi.'"

The Supreme Court of Iowa in the case of Peoples Gas and Electric Company, supra, clearly stated the rule, which to my mind definitely answers the statement of the Court just quoted from, and gives a very clear and cogent conclusion as to the purpose of the act and the result of purchases of the character mentioned, the language of the Court being as follows:

"If the Use Tax Act was enacted to protect Iowa stocks the answer might well be in the negative. But the Use Tax Act was not designed to protect Iowa stocks. All authorities agree it was designed to protect the Iowa retailer. If the Iowa retailer regularly sells in Iowa (in whole or in part) from a stockpile outside of Iowa, such sales are subject to the Iowa Sales Tax. It matters not whether such sales are made from his own stockpile or that of another. In either event [fol. 81] they are subject to the Sales tax act. The Use Tax Act was designed to give him as much protection against ruinous competition from out of state sellers with a two per cent advantage as any other Iowa retailer. The failure to tax such purchases would drive such retailers out of business and thus open loopholes in the sales tax which the Use Tax Act was designed to plug."

There is another feature of the Use Tax Law of Mississippi which adds emphasis to the fact that tangible property shipped into the state by nonresident dealers on orders taken within the state are taxable, the same being the provisions of Section 6 of Chapter 120, Laws of 1942, being Section 10451 of the Code of 1942, said provision being as follows:

> "Every person maintaining a place of business in this state and making sales of tangible personal property for use in this state, or rendering services in this state for which a tax is imposed and not exempted under the provisions of this act, shall at the time of making sales or rendering such services, whether within or without the state, collect the tax imposed by this act from the purchaser".

And another provision contained in Section 2 of the Act, under the head of "Definitions", the same being Section 10147 of the Code of 1942, defines the term "every person [fol. 82] maintaining a place of business in this state" in the following language:

> "The term 'retailer maintaining a place of business in this state' or any similar term, shall mean and include any retailer, distributor, wholesaler or manufacturer or person in business of rendering a service, having or maintaining within this state, directly or by a subsidiary, an office, distribution house, sales room or house, warehouse or other place of business, or any agent operating within the state under the authority of the retailer, distributor, wholesaler or manufacturer, or person in business of rendering a service, or their subsidiaries, irrespective of whether such place of business or agent is located within this state permanently or temporarily, or whether such retailer, distributor, wholesaler, or manufacturer, or person in business of rendering a service, or his subsidiary, is admitted to do business within this state under its general laws."

The result of this provision in the Use Tax Law of Mississippi has been construed by the Supreme Court of the United States in the case of General Trading Company v. State Tax Commission of Iowa, reported in 322 US at page 335, the Court having under consideration the identical provision of the Iowa statute to the provision just quoted from

[fol. 83] in the Mississippi Law. And in answer to the contention that the State of Iowa would have no authority to impose the duty of collecting the tax from the seller out of the State of Iowa, as well as the question of liability of the Iowa purchaser, the Court used the following language, after quoting the statutes of Iowa which are in all respects identical with the statutes of Mississippi just quoted:

"The application by that Court of its local laws and the facts on which it founded its judgment *are of course controlling here.* From these it appears that General Trading Company had never qualified to do business as a foreign corporation in Iowa nor does it maintain there any office, branch, or warehouse. The property on which the use tax was laid was sent to Iowa as a result of orders solicited by traveling salesmen sent into Iowa from their Minnesota headquarters. The orders were always subject to acceptance in Minnesota whence the goods were shipped into Iowa by common carriers or the post. Upon these facts and its holding that Trading Company was a 'retailer maintaining a place of business in this state' within the meaning of the Iowa statute, the Iowa Supreme Court held that Iowa had not exceeded its powers in the imposition of this use tax on Iowa purchasers, and that collection could validly be [fol. 84] made through the Trading Company.

"We brought the case here, 320 U. S. 731, to meet the claim that there was need for further precision regarding the scope of our previous rulings on the power of States to levy use taxes. In view, however, of the clear understanding by the Court below that the facts we have summarized bring the transaction within the taxing power of Iowa, there is little need for elaboration. We agree with the Iowa Supreme Court that Felt & Tarrant Co. v. Gallagher, 306 U. S. 62; Nelson v. Sears, Roebuck & Co., supra; and Nelson v. Montgomery Ward & Co., supra, are controlling." (Emphasis supplied).

The case of General Trading Company v. The State Tax Commission of Iowa, supra, has been the leading case on this question since the original decision thereof, and said case, as a leading case, is reported in 153 ALR at page 602. And in a voluminous annotation to said case, as reported in 153 ALR, many other cases are cited showing the trend

of the decisions of all of the courts on this subject. And under the heading "Subjects of Tax", the following language appears which is positive authority for the imposition of the tax sold in the manner in which most of the property is sold in the oil operation in the State of Mississippi, the language referred to being as follows:

> [fol. 85] "So, it was held in State Tax Commission v. General Trading Co. (Iowa) (reported herewith) ante, 602 (affirmed in 1944) 322 US 335, 88 L. ed. (Adv. 914 917), 64 S. Ct. 1028, 1030), that a foreign corporation which had never qualified to do business as such in Iowa, and which did not maintain there any office, branch, or warehouse, but which took orders from Iowa purchasers through traveling salesmen operating within the state, whose orders were subject to acceptance at the corporation's store in Minnesota, the property subsequently being delivered upon said orders in interstate commerce to the purchasers in Iowa, ther-by became a 'retailer maintaining a place of business in this state' and therefore required to collect and pay the state a use tax of 2 per cent upon the merchandise so sold, where the statute provided that a 'retailer maintaining a place of business in this state' should include 'any retailer having . . . within this state . . . any agent operating within this state under the authority of the retailer . . . irrespective of whether such . . . agent is located here permanently or temporarily, or whether such retailer . . . is admitted to do business within this state'."

[fol. 86] As evidence of the fact that the commercial world has recognized and accepted the rule announced in the case of General Trading Company, supra, as a proper construction of the Use Tax Law, is the fact that not only have the purchasers of merchandise within the state, who receive tangible property ordered from without the state recognized their liability therefor, but have acquiesced in the uniform practice of the nonresident sellers to add the Use Tax to the price of the merchandise sold and have paid to the sellers, in most instances, the tax, which, in turn, is reported and paid to the Tax Commission monthly. Indeed, the records of the Use Tax Division indicate that reports are received and Use Tax paid from sellers in the majority of the states of the union, as far North as New York, Illinois, and even

the State of California. And the records of the Use Tax Division of the State Tax Commission show that during the last three years, the total collection of Use Tax from persons who have purchased oil field equipment alone and brought same into the state for use, have paid in the aggregate, $478,572.53, most of which represents the tax on materials shipped into the state for use therein, on orders taken by local representatives of manufacturers or local dealers who have entered into the business of accepting orders for such material which is not carried in stockpiles within the state.

In addition to the amount hereinbefore mentioned, which was taken from reports of Use Tax sales, a large amount of taxes, almost equal to the figures given, have been uniformly paid by the local dealers in oil field supplies, who have added the tax to the invoice price of the merchandise sold, when all of such merchandise is shipped from without the state, [fol. 87] but the Sales Tax was added because the contract for such sale being consummated in the state was recognized as intrastate sales, and liable for the Sales Tax under the holding in the cases of Banker Brothers v. Pa., 222 U. S. 210 and Willoil Company v. Pa., 294 U. S. 169. And said cases definitely established the rule that when a contract of sale is consummated between the purchaser and the seller within the state, that it was an intrastate sale, subject to Sales Tax, without reference to how the merchandise was delivered, or the fact that same may have been shipped from without the state.

It must be noted that the appellant in this case did not depend upon the provision "not procurable in the ordinary channels of trade in Mississippi" for the exemption claimed on the Use Tax. But the appellant relied solely on its contention that it was engaged in interstate commerce in claiming exemption from the Use Tax Law. The quotation of the provision relied upon, Sub-section (d) of Section 10149 of the Code of 1942, being for the sole purpose of invoking the exemption on the basis that the property involved was "used or consumed in the furtherance of interstate transportation or interstate commerce," and the other provision of said sub-section with reference to the property not being procurable in the ordinary channels of trade appeared only as part of the quoted statute. But the appellant did not urge either in its hearings before the Tax Commission, or in the lower court, that said last mentioned provision was a basis for the claim to exemption.

There is also a provision in the Sales Tax Law of Mississippi by which property "used or consumed in the furtherance of interstate commerce" is only taxed at the wholesale rate. And all taxpayers actually engaged in interstate commerce have only claimed the benefit of the quoted provision in either the Sales Tax Law or the Use Tax Law when the [fol. 88] property involved was used or consumed in actual conduct of interstate business. Indeed, it is my understanding that this appellant made no claim to exemption from the Use Tax Law on any other theory than that under which exemption was claimed from the Sales Tax Law, than that they were actually engaged in interstate commerce. And, in effect, agreed that unless it should be held by this Court that their activities were actually in interstate commerce, it had no claim to any exemption whatever on either the Sales Tax Law or the Use Tax Law.

The holding of the Court that the tax would not be due if the property bought could not be obtained from a stockpile in Mississippi, not only caused the many taxpayers who had previously paid the Use Tax on merchandise imported into the state without question to decline to make any further payments of Use Tax, but brought about a situation where hundreds of thousands of dollars will have to be refunded, if this conclusion of the Court is maintained. And the routine settlements by some large importers of merchandise in their business which were in the process of settlement, were interrupted and ended, since the taxpayers regarded this conclusion by the Court under such construction to mean that the Use Tax was not due. And the State is therefore being deprived of much additional revenue previously considered to be due by the purchasers of such material, and all the potential revenue which could and should have been collected in the future under the provisions of the law as construed by the Commissioner, and acquiesced in by the taxpayers themselves, will be brought to an end. And this result was certainly never contemplated by the Legislature, and cannot properly be held to be the intention of the Legislature, especially in view of the decision of the Supreme Court of the United States in the General Trading Company case, supra, in which this exact question has been settled in connection with the Iowa Use Tax Law, the pro- [fol. 89] visions of which are identical with the Use Tax Law of Mississippi.

I realize that there is a marked difference in the wording

of the statutes providing for exemption from the tax imposed on the activities of this appellant within the state under the Sales Tax Law, and the language of the statute granting exemption under the Use Tax Law. While I think the decision of the Court was correct in upholding the Sales Tax collected for the activity of the appellant in transmitting oil in a pipe line wholly within the state; and if the exemption from the Use Tax Law should have been made to depend upon the fact that the property involved was used or consumed in furtherance of interstate commerce, no great harm would result. And if the Court should hold that the fact that the oil when first received by this appellant was designed or intended for transportation beyond the borders of the state was in furtherance of interstate commerce, there could be some reasonable ground on which the exemption from the Use Tax Law could be based, if the Court should hold that the local handling of the oil preparatory to transmitting it beyond the borders of the state could be regarded "in furtherance of interstate commerce." But, even if the Court should hold that that was a proper basis for exempting the property from the Use Tax, merely because the property was used in placing the oil in position to be transmitted beyond the state, then such holding would do violence to the construction placed on the provisions in both the Sales and Use Tax Laws, and acquiesced in by the taxpayers as to the reduction in the rate of Sales Tax and the exemption from Use Tax, if the property was used or consumed "in furtherance of interstate commerce."

Indeed, railroads and many other carriers have acquiesced in the construction placed on said terms in the past by the Commissioner, that the privision "used or consumed in furtherance of interstate commerce" would only apply to [fol. 90] such materials as were actually consumed in the actual conduct of interstate movement of property or passengers.

Conclusion

I am always reluctant to suggest that this Court is in error in its decisions, and do so with the greatest deference, but the far-reaching effect of the decision with reference to the item of Use Tax involved in this cause, not only in the depriving of the State of its anticipated revenue, which the Use Tax Law is designed to cover in the ever expanding oil operations in Mississippi, but because of the large amount

of refunds that it will be necessary to make on taxes previously collected from persons bringing oil field equipment into the state, the taxes on which have been admitted to be due under a proper construction of the law, makes it imperative for me to call to the attention of this Court the harmful effect of this decision when based on a construction of the law entirely foreign to the accepted meaning thereof by all persons concerned, as well as being in direct conflict with the decision of the Iowa Court in construing a similar statute of Iowa, and in conflict with the Supreme Court of the United States on the exact question.

I therefore respectfully submit that the language used by this Court in its majority opinion as to the reason for holding that the Use Tax paid by this appellant was not due, should be withdrawn. But if the Court should be of the opinion that the property on which the Use Tax was paid was used "in furtherance of interstate commerce," even though the activity of the appellant within the state on which the Sales Tax was demanded and paid is not interstate commerce, then the loss of the small amount of the Use Tax involved in this case would not be harmful to the finances [fol. 91] of the State, whereas if the basis for holding the Use Tax not due in this case should be adhered to by this Court, then the anticipated revenue that the state should receive, and which the law was intended to authorize the State to receive, could not be collected on the vast amount of material which will be brought into the State in the future in the development of the oil production in Mississippi.

I therefore earnestly urge that the part of the majority opinion dealing with the Use Tax Law be reconsidered and that the decision of the Court on said question be reversed, or that the holding that the Use Tax was not due be placed on some other grounds which would be more reasonable under the law than that announced by the Court in its majority opinion.

Respectfully Submitted, (S.) J. H. Sumrall, Attorney for the Appellee.

Certificate

I, J. H. Sumrall, Attorney of Record for the Appellee in the foregoing cause, in anticipation of a favorable consideration by the Court of this Suggestion of Error, have this day mailed a true copy of this Suggestion of Error to Messrs.

Alexander, Alexander and Chill, of Jackson, Mississippi, Attorneys of Record for the Appellant.

(S.) J. H. Sumrall, Attorney for the Appellee.

[fol. 92]. [File endorsement omitted.]

IN THE SUPREME COURT OF MISSISSIPPI

[Title omitted]

SUGGESTION OF ERROR FOR APPELLANT, INTERSTATE OIL PIPE LINE COMPANY—Filed May 25, 1948

Comes now Interstate Oil Pipe Line Company, appellant herein, and files this suggestion of error and respectfully suggests that the Court erred in its decision heretofore rendered in this cause. It appears that this error may have arisen from a confusion between the question of the power of the State to tax interstate commerce or incidents thereof and the question of whether or not the activities of the appellant in the instant case are in fact part of interstate commerce. If the State has the power to levy a tax on the gross receipts from interstate commerce, and has exercised that power, the question of whether the activities of this appellant are interstate or intrastate commerce becomes unimportant. They are taxable in either event. But if the States does not have or has not exercised the power to levy such a tax, the only question for decision is whether or not the activities of the appellant constitute interstate commerce. For grounds of such error, appellant assigns the following:

1. The Court does not make it clear whether or not it is holding that transportation of oil by pipe line between points in the State may be subject to the Sales Tax (Para. 10109, Chap. 3, Vol. 7, Mississippi Code of 1942) even though such transportation may constitute *interstate commerce*.

(a) If the Court holds interstate commerce taxable, it must (1) ignore the exemption clause in the Mississippi Act, and (2) go directly contrary to the opinions of the United States Supreme Court which have always held, including those cases decided since the innovation

of the "share the burden theory," that privilege taxes levied on the basis of gross receipts are invalid as applied to gross receipts from interstate commerce.

[fol. 93] (b) If the Court holds interstate commerce is not taxable under the Mississippi Act, then that portion of the opinion of the Court beginning on page 14 thereof and continuing to page 20 enters in no way into the decision reached by the Court in this case. In the latter event the decision of the Court must turn on the question of whether the operations of appellant on which the tax has been levied constitute interstate or intrastate commerce.

2. The Court erred in holding on page 10 of its opinion that "this pipe line company was an intrastate carrier" insofar as its activities are involved in this case.

I

Is Interstate Commerce Subject to the Tax Imposed by Section 10109, Mississippi Code of 1942?

On page 9 of its opinion the Court says that on "transported to destinations outside the State, either by interstate trunk pipe lines, on a continuous journey, or likewise by railroad from local shipping points within the State" constitutes "that character of commerce 'which the State of Mississippi is prohibited from taxing under the Constitution of the United States of America.'" This statement would indicate that the Court accepts the exemption clause in the tax statute which is quoted in part in the above portion of its opinion, and that the tax does not apply to gross receipts from interstate transportation. It is suggested that this is the only correct interpretation of Paragraph 10109, Chapter 3, Volume 7, Mississippi Code of 1942. The *right* or *power* of the State to tax is not in issue as the legislature has seen fit to exclude interstate commerce from the operation of the statute.

The Court goes on, however, in its opinion, pages 14 to 20, to consider the State's *power* to tax interstate commerce under the "share the burden" theory. This argument could be reconciled with the statutory exemption if it could be established that even though the transportation of oil is interstate commerce, it is not commerce "which the State of Mississippi is prohibited from taxing under the Constitu-

tion of the United States of America." But if this latter premise were established, then a privilege tax could be levied on the gross receipts from all transportation by pipe line, by railroad, or otherwise, regardless of whether it were part of an interstate movement. If the State had the [fol. 94] power and right to levy a privilege tax measured by the gross receipts from interstate commerce, there would be no reason to stop with the taxation of the particular movements involved in this suit. The exemption on which appellant is relying in this case would be meaningless and of no effect. But the State Tax Commission has never based its levy on such a contention and has not made such a contention in this suit. Furthermore, such a contention is inconsistent with the language of this Court on page 9 of the opinion which was quoted above. In light of this inconsistency, the appellant does not believe the Court intended to base any part of its decision in this case on the theory of the case of *McGoldrick* vs. *Berwind-White Coal Mining Co.*, 309 U. S. 33, 84 L. Ed. 565, relied on by the Mississippi Supreme Court in the case of *Stone* vs. *Memphis Natural Gas Co.*, 29 So. (2) 268, that interstate commerce must bear its "just share of state tax burdens." But since the Court has discussed this theory with approval and at some length in its opinion, the appellant feels that the opinion should include a statement as to the applicability of this material to this case.

In event the Court is basing its decision in any part on the power of the State to levy a privilege tax based on gross receipts from interstate commerce, it should be pointed out that the State has no such power. The appellant in its original brief in this cause under Part I of its argument pointed out the fact that the United States Supreme Court has never under the "share the burden" or any other theory sustained a state tax levied directly on gross receipts derived from interstate commerce. This is true whether it be called a "privilege" tax, a "sales" tax, or some other kind of a tax, so long as it is in fact a *direct* tax on interstate transportation. Indeed, the case of *McGoldrick* vs. *Berwind-White Coal Mining Co.*, supra, which the Court cites in its opinion limits the effect of the "share the burden" theory therein expounded with the following language:

> "Certain types of tax may, if permitted at all, so readily be made the instrument of impeding or destroy-

ing interstate commerce as plainly to call for their condemnation as forbidden regulations. Such are the taxes already noted which are aimed at or discriminate against the commerce or impose a levy for the *privilege of doing it* or tax *interstate transportation* or communication or their *gross earnings*, or levy an exaction on merchandise in the course of its interstate journey." (Italics ours.)

The true nature of the tax under consideration and its effect upon interstate commerce is to be determined by its economic effect rather than by its verbal characterization. As was said in the case of *Wagner* vs. *Covington*, 251 U. S. 95, 64 L. Ed. 157:

[fol. 95] "and it hardly is necessary to repeat that when this court is called upon to test a state tax by the provisions of the Constitution of the United States, our decision must depend not upon the form of the taxing scheme, or any characterization of it adopted by the courts of the state, but rather upon the practical operation and effect of the tax as applied and enforced. The state court could not render valid, by misdescribing it, a tax law which in substance and effect was repugnant to the Federal Constitution; neither can it render unconstitutional a tax that, in its actual effect, violates no constitutional provision by inaccurately defining it. *St. Louis Southwestern R. Co.* vs. *Arkansas*, 235 U. S. 350, 362, 59 L. Ed. 265, 271, 35 Sup. Ct. Rep. 99."

The recently decided case of *Richfield Oil Corp.* vs. *State Board*, 329 U. S. 69, 91 L. Ed. 80, makes this pertinent observation:

"The tax is measured by the gross receipts of retail sales and is levied on retailers 'for the privilege of selling tangible personal property at retail.' Cal. Stat. 1935, p. 1,253. The retailers are authorized to collect the tax from the consumers. Cal. Stat. 1933, p. 2,602. And a sale is 'any transfer of title or possession . . . in any manner or by any means whatsoever of tangible personal property, for a consideration.' Cal. Stat. 1935, p. 1,256. The California Supreme Court held that the tax is an excise tax for the privilege of conducting a retail business measured by the gross

receipts from sales; that it is not laid upon the consumer and does not become a tax on the sale or because of the sale. (27 Cal. (2) 152, 163 P. (2) 2.

"That construction, being a matter of state law, is binding on us. But it is not determinative of the question whether the tax deprives the taxpayer of a federal right. That issue turns not on the characterization which the state has given the tax, but on its operation and effect. See *St. Louis S.W.R. Co.* vs. *Arkansas*, 235 U. S. 350, 362, 59 L. Ed. 265, 271, 35 S. Ct. 99; *Kansas City, Ft. S. & M.R. Co.* vs. *Botkin*, 240 U. S. 227, 231, 60 L. Ed. 617, 618, 36 S. Ct. 261."

The U. S. Supreme Court specifically proclaimed the invalidity of a State tax upon gross receipts from interstate commerce as early as 1887 in *Philadelphia & S. Mail S. S. Co.* vs. *Pennsylvania*, 122 U. S. 326, 30 L. Ed. 1,200; reiterated the doctrine in 1888 in *Ratterman* vs. *Western Union Telegraph Co.*, 127 U. S. 411, 32 L. Ed. 229; again in 1908 in *Galveston, H. & S.A.R. Co.* vs. *Texas*, 210 U. S. 217, 52 L. Ed. 1,031; in 1912 in *Meyer* vs. *Wells Fargo*, 223 U. S. 298, 56 L. Ed. 445; in 1917 in *Western Oil Refining Co.* vs. *Lipscomb*, 244, U. S. 346, 61 L. Ed. 1,181; in 1930 in *New Jersey Bell Telephone Co.* vs. *State Board of Taxes and Assessments*, 280 U. S. 338, 74 L. Ed. 463; in 1936 in *Fisher's Blend Station* vs. *Tax Commission*, 297 U. S. 650, 80 L. Ed. 956; in 1937 in *Puget Sound Stevedoring Co.* vs. *Tax Commission*, 302 U. S. 90, 82 L. Ed. 68; and in 1946 in *Freeman* vs. *Hewit*, 329 U. S. 249, 91 L. Ed. 265. Then in 1947 in *Joseph* vs. *Carter & Weekes Stevedoring Co.*, 330 U. S. 422, 91 L. Ed. 993, the U. S. Supreme Court decided a case that, as far as [fol. 96] the question of the power of the State to tax interstate commerce is concerned, was very similar to the instant case. In the *Carter & Weekes* case, the question was the power of the City of New York to levy on the business of loading and unloading in New York harbor vessels engaged in interstate commerce a tax providing as follows:

"For the privilege of carying on or exercising for gain or profit within the city any trade, business, profession, vocation, or commercial activity . . . every person shall pay an excise tax which shall be equal to one-tenth of one per centum upon all receipts received in and/or allocable to the city from such profession,

vocation, trade, business or commercial activity exercised or carried on by him during the calendar year . . . ."

It will be noted that the tax involved in that case was a non-discriminatory local privilege license imposed for the carrying on of any trade, business, commercial activity, etc., and that the rate was only one-twentieth of the rate imposed by the statute at issue in this case. The Supreme Court in holding the tax invalid said in part, page 427:

". . . the words themselves of the Commerce Clause forbid undue interferences by the states with interstate commerce and that *this rule applies in full force to an unapportioned tax on the gross proceeds from interstate business*, where the taxes were not in lieu of ad valorem taxes on property." (Italics ours.)

That is the U. S. Supreme Court's latest word on the power of a State or its political subdivisions to levy a *privilege* tax *measured by gross receipts* from interstate commerce, the very question under discussion in the opinion in the instant case.

The Mississippi Privilege Tax Code (Title 38 of Mississippi Code 1942, Annotated) contains privileges taxes on all types of businesses and occupations, including, in Paragraph 9606, pipe line companies. This paragraph reads as follows:

"Upon each person engaging or continuing in this state in the business of operating a pipe line or transporting in or through this state oil, or natural or artificial gas through pipes or conduits, a tax as follows:

On each mile of pipe having a diameter of 20 inches or more	$75.00
On each mile of pipe having a diameter of 15 inches and less than 20 inches	$52.50
On each mile of pipe having a diameter of 12 inches and less than 15 inches	$37.50
On each mile of pipe having a diameter of less than 12 inches	$15.00

"The term 'pipe line' as used in this section shall include only trunk lines, and shall not apply to those pipe lines used solely for distributing gas or oil in or

near cities, towns and villages, (known as service lines), to the ultimate consumer. And this section shall not apply to those persons, firms, or corporations mining or producing gas or oil on which a privilege tax measured by gross production is imposed and paid in this State."

The incidence of this tax is almost identical to the incidence of the Sales Tax as construed by the Court in its opinion herein. They are both taxes on the business of operating a pipe line. But in Paragraph 9606, the amount [fol. 97] of the tax is measured simply by the miles of pipe line in the State regardless of the type of use or the amount of use of those lines. The tax would be the same if the company did one dollar's worth of interstate business or $100,000 worth of such business, or even if it did no interstate business. Even so, this privilege tax which had no exemption clause for interstate commerce and which was not based on gross receipts was held invalid by the United States Supreme Court when applied to interstate commerce, *State Tax Commission* vs. *Interstate Natural Gas Company, Inc.*, 284 U. S. 41, 76 L. Ed. 156. Surely then, interstate commerce cannot be subjected to a privilege tax based on gross receipts, a tax which if applied to that commerce, varies directly with its volume and the proceeds derived therefrom.

As stated by the Court in its opinion (page 15), the cases cited in the opinion herein are not in point on the question of the power of the State to levy a privilege tax measured by gross receipts, because they did not involve that type of tax. *Stone* vs. *Memphis Natural Gas Co.*, supra, which the U. S. Supreme Court now has under consideration on certiorari, involves the question of the power of the State to levy a franchise tax based on capital, surplus and undivided profits allocated to Mississippi in the ratio of property owned and business done in the State. This type of tax is levied for the privilege of being in the State and not on the privilege of transacting interstate business. It does not depend on business being done. It is, therefore, less direct in its effect on interstate commerce than is the tax in the instant case. *McGoldrick* vs. *Berwind-White Coal Mining Co.*, supra, involved the question of the power to levy a sales tax based on sales price on transfer of ownership of property at the conclusion of an interstate journey. *Stone* vs. *Interstate Natural Gas Co.*, 308 U. S. 522, 84 L. Ed. 442, was another

Mississippi franchise tax case. *Stone* vs. *General Contract Purchase Corp.*, 7 So. (2) 806, 193 Miss. 301, and *Stone* vs. *General Electric Contracts Corp.*, 7 So. (2) 811, 193 Miss. 317, involved a privilege tax levied on finance companies based on the value of securities purchased by them in the State. *State of Wisconsin* vs. *J. C. Penney*, 311 U. S. 435, 85 L. Ed. 267, involved a tax "for the privilege of declaring and receiving dividends" based on 2½% of the amount of such dividends. *Coverdale* vs. *Arkansas-Louisiana Pipe Line Co.*, 303 U. S. 604, involved a privilege tax on the development of power to operate machinery based on a rate of $1 per annum per horse power.

Dunston vs. City of Norfolk, 15 S. E. (2) 86, was another case involving a privilege tax on the sale of products which had moved in interstate commerce. Cases such as this latter and the *Berwind-White* case may be clearly distinguished from the instant case where we have a tax not on the *proceeds from the transfer of ownership* of goods which have been moved in interstate commerce as in those cases, but a tax on the actual *proceeds received for the movement* of goods, a tax on the transportation service furnished.

[fol. 98] Thus it is evident that there is not now and never has been a trend in the decisions of the Supreme Court of the United States toward allowing the States to levy a privilege tax based on gross receipts from interstate transportation. An unbroken line of authority right down to the last term of Court has held such taxes invalid. The only question for decision in this case then is whether or not the gross receipts on which the tax herein was assessed were from interstate commerce.

II

Are the Appellant's Activities Intrastate Commerce?

The Court apparently bases its decision that "this pipe line company was an intrastate carrier" insofar as its activities here involved are concerned on the following arguments, the error of each of which shall be shown in turn:

> (a) "If the exemption was intended to apply under the facts of the instant case, then the levy of the tax on the privilege of operating a pipe line for the transportation of oil from one point to another in the State could have served no useful purpose . . ." (Opinion, page 9).

(b) The oil transported by pipe line is ultimately shipped out of the State in interstate commerce, but the interstate commerce does not commence until the railroad movement starts.

(c) The pipe line company was hired only to transport the oil from one point in the State to another and did not participate in the tariff paid for the actual shipment out of the State.

(d) The pipe line company does not transport the oil out of the State.

In the first argument set out above the Court has judicially determined that there are no shipments of oil from one point in Mississippi to another where the oil is not ultimately to be transported out of the State. The Court, therefore, maintains the legislature would not have even provided a tax on pipe line transportation if it had not intended to tax the type of shipments here. This premise is that the Legislature would not have levied the tax unless it had intended to collect a considerable amount of revenue and that since all the oil produced in the State was shipped out, it must have intended to tax interstate transportation although such purpose is expressly negatived in the exemption clause. This argument assumes that the Legislature thought that the oil industry in Mississippi would always remain as [fol. 99] it was when this provision of the law was enacted and that no crude oil would ever be stored or processed in this State. As a matter of fact, there are now a few small refineries operating in the State, some of which are served by local pipe lines. The intent of the legislature was clearly to tax "every person engaging . . . in the business of operating a pipe line for transporting from one point to another in this State oil . . ." and such tax was to be measured by "the gross income of the business," except for gross income "derived from business conducted in commerce . . . which the State of Mississippi is prohibited from taxing under the Constitution of the United States of America." The legislature was levying the tax only on the business of "transporting from one point to another in this State," yet they realized that part or all of the gross receipts from business between points in the State might be derived from interstate commerce and hence would not be subject to State taxation. In any event, the

intent of the legislature is indicative only of the scope of the statute and does not help in any way to determine whether or not the activities of this appellant are interstate commerce. The stipulated facts of this case when measured by the yardstick of judicial authority show those activities to be entirely interstate in nature.

The Court expresses the idea of the second argument at the top of page 10 of the opinion and goes fully into the argument beginning at the bottom of page 11 of said opinion. The pipe line movement in this case the Court contends is the type of movement referred to in American Jurisprudence when it states that:

> ". . . a movement merely in preparation for export . . . a mere transfer of the property to a depot or other place within a state from which the transportation or journey to another state is to begin *at a convenient time*, is not a part of that transportation." (Italics ours.)

We agree with the principle of law and with the case cited in support thereof, *Coe* vs. *Errol*, 116 U. S. 517, but feel the Court erred in applying the principle to the instant case. The appellant respectfully submits that in the case of pipe line transportation the "depot or other place" from which the "journey to another state is to begin" is the point at which the oil is received into the pipe line's custody, the connecting valves at the lease tanks in the producing fields where the pipe line transportation begins. The Court has failed to recognize that the pipe line company is a *common carrier* just as much so as is the railroad and is similarly subject to the control of the Interstate Commerce Commission. The above principle of law did not contemplate commitment of the goods to a *common carrier* for transporta-[fol. 106] tion in *continuous movement* out of the State such as we have in this case. Indeed, one sentence quoted by the Court (Opinion, page 12) from the *Coe* vs. *Errol* case is as follows:

> "Until actually launched on its way to another State or *committed to a common carrier* for transportation to such State, its destination is not fixed and certain."

The destination is just as "fixed and certain" and the shipper is no more likely to change his mind when the pipe

line is carrying the oil than when the railroad is carrying it. The fact of possibility of diversion in transit in either instance does not destroy the interstate character of the shipment. A shipper always has the power to order a carrier to stop a particular shipment as soon as the facilities of the carrier permit and may either terminate the shipment at such point or divert it to another destination. However, the Court is in error in stating that diversion to an intrastate destination could be made while the oil is in the appellant's custody without violating the shipper's agreement with the pipe line company. The tariff filed with the Interstate Commerce Commission under which the shipments here involved were made and which was included as an exhibit with the agreed statement of facts herein, contains the following provision:

> "This Company will receive crude petroleum, as herein defined, from lease tankage within the area of its gathering system, for transportation to destination named herein, *for interstate transportation beyond,* under the terms and conditions of the following rules and regulations." (Italics ours.)

Thus this tariff would be breached by a diversion to an intrastate destination. A local movement destined for ultimate delivery within the State could not be handled under these I. C. C. tariffs, but would have to be the subject of a special contract negotiated between the shipper and pipe line. None of the shipments involved in this suit were of that nature. As demonstrated in Part II of the argument in our original brief, the movement by the pipe line in this case cannot be separated from the movement by the railroad. They are each portions of the continuous movement by the shipper from the producing fields in Mississippi to points outside Mississippi. Suppose there had been railroad spur lines running through Eucutta or Heidelberg fields at the time of their discovery and that fifteen miles away these railroad spurs intersected an interstate oil pipe line. Suppose then the owner of the oil made arrangements to load his oil on the railroad and have it operate a shuttle service to the pipe line where the oil would be transferred to tanks and be fed into the pipe line for shipment out of the [fol. 101] State. Would the Court hold that the railroad movement was an intrastate movement prior to and only

in preparation for the interstate shipment by the pipe line? This situaiton would as does the instant case have all the elements necessary to make it a part of the interstate shipment. There is no basis for distinction between shipment first by rail and then by pipe line and shipment first by pipe line and then by rail. There is no magic in railroad transportation that makes it interstate commerce and that makes pipe line transportation something less. Suppose the oil instead of being transported a few miles by pipe line and then being transferred to a railroad had been transported many miles by pipe line and then loaded aboard barges at Natchez for shipment to Baton Rouge. Or suppose the oil had been carried by pipe line to Gulfport and had there been loaded aboard tankers for shipment to New Jersey. Would the Court have still held that the pipe line movement was only in preparation for and not part of the interstate movement? Such a decision would be directly contrary to the case of *Railroad Commission* vs. *Texas & Pacific Ry. Co.*, 229 U. S. 336, 57 L. Ed. 1,215, where the U. S. Supreme Court held a railroad transporting lumber from one point in Louisiana to another was engaged in interstate commerce since the lumber was transferred from the railroad to ships as sufficient cargo was accumulated, and thence shipped out of the State. The same rule has been applied to pipe lines in *Clark* vs. *Atlantic Pipe Line Company*, 134 S.W.(2) 322, where the pipe line operations were from points in Texas to the Texas Gulf Coast. There the oil was transferred to tankers for shipment out of the State. Many cases of a similar tenor may be found in our original brief. Or does the Court seek to show a distinction on the basis of the distance the oil is moved? Is a movement by the pipe line of 5 miles merely preparatory to the interstate shipment, but a movement of 100 miles part of the interstate shipment? If so, a line must be drawn some place. Where will the Court draw this line? At 6 miles, at 7 miles, or at 51 miles? Thus, on examination the error of testing a shipment by the length of the movement becomes readily apparent, and we realize that we must return to the test established by the Courts, the essential character of the shipment. We established, pages 26-35 inclusive of our original brief, that where oil or other freight is committed to a common carrier with the intent of the shipper that it shall be shipped out of the State, the interstate transportation of

the freight has in fact commenced. The undisputed facts in the instant case show commitment to a common carrier with intent to transport out of the State and that the oil is in fact so transported.

[fol. 102] A third factor which seems to influence the Court in its decision that the appellant's activities are intrastate commerce is the fact that the railroad and pipe line do not move the oil under the same contract and that they make separate charges to the shipper for their services. On page 2 of the opinion the Court states that the appellant

> "received no part of the charges collected by the railroad company for transporting the oil across the state line to its destinations. In fact, it had no contractual relation with the railroad company in connection with the latter's said interstate transportation of such oil."

On page 11 of the opinion the Court says the pipe line company

> "was not employed or hired to transport oil . . . outside the state, but only to transport the same to the railroad and then pump it into the railroad tank cars as a local activity."

Again on page 13 the Court says:

> ". . . the pipe line company was to receive no part of the charges to accrue after the oil was loaded into railroad tank cars for its final destination."

The tax, the Court says at page 14,

> "is not measured by a per cent of the entire gross income received from the transportation of the oil from the tanks on the producing leases to its out of state destination,"

since there are separate tariffs. But the Court itself shows the mistake of relying on these factors in determining whether or not a movement is interstate commerce when it says on page 11 of the opinion,

> "In other words, neither the form of contract nor method of billing is controlling on the question of whether the pipe line company was employed to do more than render a local service for the owner of the oil. . . ."

The truth of this statement is undeniable. It is reflected in all the cases in which the question has ever been raised. Many of these cases were cited in our original brief where that subject was dealt with from pages 40 to 46 inclusive. Why then has the Court laid such stress on the fact of separate charges and lack of contractual relationship? If the appellant had thought this point controlling, joint tariffs could have been arranged with the railroad, covering the shipment from lease tanks to final destination. It is not common practice for pipe lines and railroads to operate under joint tariffs because of practical difficulties, both both types of common carrier are under the jurisdiction of the Interstate Commerce Commission and operate under tariffs filed with that Federal commission. They could operate [fol. 103] under joint tariffs if they so desired. If a joint tariff had been arranged in the instant case, would the Court have held that the appellant's activities were interstate? The characteristics of separation on which the Court lays such stress would have disappeared, but the essential character of those activities would not have been changed. The essential character would remain, as it now is, interstate commerce and the same decision should be reached although the charges are separate.

A fourth factor may have influenced the Court in its decision that appellant's activities are intrastate. On page 10 of the opinion it states:

> "It (the appellant) transported no oil across the State line in the operation of such local pipe lines, that is to say, the essential and controlling feature of its business from which the tax in question was collected was the transportation of oil from one point to another in intrasfate commerce."

We are in agreement with this statement except for the last two words. The balance of the statement is no authority for this legal conclusion. We cannot think that the Court attached any weight to the fact that appellant did not itself transport the oil across the state line in reaching its conclusion. The reporter system is full of cases in which goods were transported from one point to another within a State and yet were held to be in interstate commerce. A few of these authorities, including *Joseph vs. Carter & Weekes Stevedoring Co., supra*, one of the latest decisions by the

United States Supreme Court on this specific point, were cited in our original brief, pages 37 to 40 inclusive. In the *Carter & Weekes* case there was no question but that all the activities took place entirely in New York City. Furthermore, the stevedoring company was separately paid for these activities and clearly did not participate in the steamship company's freight charge for its transportation. We are unable to find any valid distinction between the loading of ships and the loading of railway tank cars insofar as the question of the connection of this loading with the subsequent out of state shipment is concerned. The facts of the instant case, of course, are stronger than those of the *Carter & Weekes* case in that the appellant was a common carrier and that there was a transportation by the appellant in addition to the loading.

One other point made by the Court requires comment. The Court at page 20 of the opinion apparently dismisses many of the authorities cited in our original brief with the comment:

> "We are of the opinion that the case of *Carson Petroleum Co.* vs. *Vial* . . . and other similar cases . . . some of which are relied on by the appellant, are to be [fol. 104] distinguished from the instant case in that they involve only the question of whether or not a property tax—for ad valorem purposes—could be imposed upon a commodity which is temporarily interrupted in transit for a change in the mode of transportation and where the same does not remain in the taxing state long enough to acquire a situs therein for ad valorem taxation purposes."

Evidently the Court has confused the authorities cited on the question of the *State's power to tax interstate commerce* or incidents thereof and those cited on the question of *what constitutes interstate commerce*. The principle that the State cannot levy an ad valorem tax on property moving in interstate commerce is well settled. But we did not cite these cases to prove that the State cannot levy a gross receipts tax on the proceeds of interstate commerce. We recognize that one is not authority for the other. To prove our argument on the State's lack of power to tax, we used cases involving privilege taxes measured by gross receipts, the identical tax which is involved in this case. But we did

use the property tax cases to establish when goods are in interstate commerce. They are authority for the question of when interstate commerce has commenced, and the fact that interstate commerce is not broken by transfer from one carrier to another or from one mode of transportation to another or by temporary stoppage in transit to effectuate such transfer. They are authority for the fact that movement entirely within one state on a local bill of lading can be part of an interstate movement. We have used property tax cases *along with* privilege tax cases to establish those points. The Court itself has similarly used property cases in its opinion. The case of *Coe* vs. *Errol, supra,* on which the Court relies, and the quotation from 51 Am. Jur. Section 205, beginning on page 11 of the opinion herein, are concerned with when property is being carried in interstate commerce so as to be exempt from ad valorem taxation. Such reliance on property tax cases is natural since they form the great bulk of judicial authority on the definition of interstate commerce, for which they are valid authority.

Conclusion

We do not believe the Court has based its opinion on the validity of the Sales Tax, paragraph 10,109, Chap. 3, Vol. 7, Mississippi Code of 1942, as applied to the activities of the appellant on the power or right of the State to tax interstate commerce, but since it has considered this question at length in its opinion, we feel that its position in this regard should be made clear. If the Court has based its opinion to any extent on the "share the burden" doctrine as set out in [fol. 105] *Stone* vs. *Memphis Natural Gas Co., supra,* we respectfully suggest that the Court withhold its ruling on this Suggestion of Error until such time as the United States Supreme Court has handed down its opinion in that case.

We believe that the Court's opinion rests on its finding that the activities of this appellant constitute intrastate commerce, i.e. are a purely "local activity." But the grounds for this legal conclusion are not apparent. The intent of the legislature is important in determining the scope of the statute, but not in determining whether this appellant is an interstate or intrastate carrier. We cannot believe the Court based its conclusion on the belief that interstate transportation had not started, for this movement had all the elements of interstate commerce ever required by any of the authorities which have come to our attention. There was

commitment to a common carrier with intent to ship the oil out of the state. There was movement by that common carrier, the appellant, to the end of its line, where the oil was transferred to another carrier for a continuation of the movement to its destination out of the State. We do not believe the Court could have based a finding that the interstate movement had not commenced on the fact that only a certain number of miles were traversed, or that a pipe line and not a railroad was the originating carrier. Nor do we believe the Court found interstate commerce had not commenced because the appellant had no contractual relationship with the second carrier and was paid separately for its services. The Court itself has stated that such factors are not controlling. The fact that appellant's activity took place entirely within the State must also be dismissed as grounds for the Court's opinion.

The cases of *Daniel Ball* vs. *U. S.*, 77 U. S. 557, 19 L. Ed. 999. (1871), *Railroad Commission* vs. *Texas & Pacific Ry. Co., supra* (1913), *Puget Sound Stevedoring Co.* vs. *Tax Commission, supra* (1937), *Clark* vs. *Atlantic Pipe Line Company, supra* (1939), *Joseph* vs. *Carter & Weekes Stevedoring Co., supra* (1947), and other cases cited in appellant's original brief were all cases in which there was transportation only from one point to another in the same state, in which the mode of transportation was changed at the end of that "within State" movement, in which the movement within the State was separately charged and paid for, in which if there had been no intent to ship the goods out of the State and had been no subsequent shipment of the goods, the shipment would have been a purely "local activity." But because there was intent that the initial movement should be followed by a subsequent movement out of the State and because this subsequent movement in fact ensued without a break in the [fol. 106] continuity, these movements were all held to be in interstate commerce. The facts in the instant case are stronger than the facts in several of the cases cited. The Court has "conceded" in its opinion at page 14 that

> "there is no appreciable interruption at the railroad shipping point in the continuity of the transportation of the oil from the tanks on the producing oil leases to its out of state destinations . . ."

On what factors then did the Court base the opinion that appellant's activities are intrastate?

The stipulated facts of this case clearly place appellant's transportation of oil within the definition of interstate commerce. The tax, therefore, is not levied on the gross proceeds of a "local activity" but on the gross proceeds from a portion of an interstate movement of oil. We respectfully suggest that such a tax cannot be sustained either under the language of the Mississippi Statute or under the Commerce Clause of the Constitution of the United States as construed by the United States Supreme Court.

In the original Assignment of Errors filed in this case with our original brief, we set out three errors of the lower court as follows:

> "(1). That the gross income of appellant, Interstate Oil Pipe Line Company upon which sales taxes were paid and for refund of which this suit was brought, was excepted from the gross income used in determining the measure of the tax imposed by Section 10109 of the Mississippi Code of 1942, by reason of the fact that said gross income 'was derived from business conducted in commerce between this State and other States of the United States which the State of Mississippi is prohibited from taxing under the Constitution of the United States of America.'
>
> "(2) That the use, storage or consumption of the tangible personal property by appellant within this State upon which use or compensating taxes have been paid and for refund of which this suit was brought was exempt from tax by the provisions of Section 10149 of the Mississippi Code of 1942 by reason of the fact that said personal property was 'used or consumed in the furtherance of interstate transportation or interstate commerce.'
>
> "(3) That if the General Sales Tax Law and the Compensating or Use Tax Law, which are incorporated in Title 40, Chapter 3, Volume 7, of the 1942 Code of Mississippi, as amended by Chapter 262 of the General Laws of Mississippi for 1946, House Bill No. 311, are applicable to Appellant's activities as set out in this suit, then said laws are void and of no effect by reason of the fact that they are in conflict with Article I, Section 8, Clause 3, of the Constitution of the United States, known as the Commerce Clause."

In order that there may be no misunderstanding and no question as to the scope and meaning of the decision of the Court [fol. 107] in this case, we respectfully suggest that the final opinion of the Court in this case contain specific rulings on each of those assigned errors.

Respectfully submitted, J. L. Seger, P. H. Hunter, F. R. Clark, Jr., James A. Alexander, Walter D. Davis, Attorneys for Appellant. Jas. A. Alexander, of Counsel.

[fol. 108] IN THE SUPREME COURT OF MISSISSIPPI

In Banc: 16308

No. 36,672

INTERSTATE OIL PIPE LINE COMPANY

vs.

A. H. STONE, Chairman State Tax Commission

OPINION ON SUGGESTIONS OF ERROR—Filed June 14, 1948

ROBERDS, J.

Each party to this appeal has filed a Suggestion of Error.

Appellant contends we were in error in affirming the lower court in its disallowance to appellant of a refund of $20,296.36 collected by the Chairman of the State Tax Commission for appellant's privilege in operating pipe lines in Mississippi through which it transported oil from one point to another in this State. Sections 10105 and 10109, Code 1942. We have reexamined the questions, but find no reasons impelling a change in, or reversal of, that opinion.

Appellee suggests that we erred in allowing to appellant a refund of Use Taxes amounting to $5,030.27. That holding was based, first, on the ground that the property operated by appellant in transporting oil was used "* * * in the furtherance of interstate transportation, or interstate commerce * * *"; and, second, on the further ground that such property was "* * * not procurable in the ordinary channels of trade in the State of Mississippi," both of which exceptions are set out in Section 10149, Code 1942. The facts underlying the second ground were not fully devel-

oped in the record, but we thought enough appeared to justify our holding in the absence of citation of any authority to the contrary. However, the Suggestion of Error has [fol. 109] called to our attention the cases of Peoples Gas & Electric Company v. State Tax Commission of Iowa, 28 N. W. (2d) 799, and General Trading Company v. State Tax Commission of Iowa, 322 U. S. 335, 88 L. Ed. 1309, apparently holding otherwise. A decision on this point was not necessary to the result reached by us; it was sufficient that the property was being used in furtherance of interstate transportation or commerce. We, therefore, withdraw all that was said in the original opinion in Paragraphs Eleven, Twelve and Thirteen thereof, and we let non-liability for the Use Tax rest solely on the stated ground that the property was being used in furtherance of interstate transportation or interstate commerce.

Both suggestions of error are overruled.

[File endorsement omitted.]

[fol. 110] IN THE SUPREME COURT OF MISSISSIPPI

[Title omitted]

JUDGMENT ON SUGGESTIONS OF ERROR—June 14, 1948

This cause this day came on to be heard on the suggestions of error filed herein and this court having sufficiently examined and considered the same and being of the opinion that both of said suggestions of error should be overruled doth order and adjudge that said suggestions of error be and they are both hereby overruled, but this court does not withdraw all that was said in the original opinion in Paragraphs Eleven, Twelve and thirteen thereof and it is so ordered.

[fol. 111] [File endorsement omitted]

IN THE SUPREME COURT OF MISSISSIPPI

[Title omitted]

PETITION FOR APPEAL TO THE SUPREME COURT OF THE UNITED STATES—Filed August 11, 1948

To the Chief Justice of the Supreme Court of the State of Mississippi:

Your petitioner, Interstate Oil Pipe Line Company, a Delaware corporation, respectfully shows:

1. Petitioner is the appellant in the above entitled cause.

2. Petitioner filed a complaint in the Circuit Court of the First District of Hinds County, Mississippi, on the 4th day of April, 1947, to recover from A. H. Stone, Chairman State Tax Commission, sales taxes in the amount of $20,296.36 and use taxes in the amount of $5,030.27 for the years 1944 and 1945 and for the period from January 1, 1946 to June 30, 1946, which petitioner had paid under protest, contending that said taxes were not due by reason of the fact that they were imposed on its business of transporting oil by pipe line in interstate commerce which is specifically exempt by the provisions of the Mississippi Sales and Use Tax Law and which the State of Mississippi is prohibited from taxing by the provisions of Article I, Section 8, Clause 3, of the Constitution of the United States and that said statute as applied was repugnant to the Constitution [fol. 112] of the United States and void: Judgment was rendered by said Court in said cause in favor of appellee, denying recovery of said taxes.

3. Petitioner took an appeal from said judgment of the Circuit Court of the First District of Hinds County, Mississippi, to the Supreme Court of the State of Mississippi, and that Court, on the 26th day of April, 1948, entered its opinion and judgment affirming said judgment insofar as it disallowed a refund of sales taxes in the amount of $20,296.36 to petitioner, but reversing the same insofar as it disallowed a refund of use taxes in the amount of $5,030.27 and allowing said amount to petitioner. Thereafter both petitioner and appellee filed in the Supreme Court of the State of Mississippi petitions for rehearing, which under

the practice in said Court are denominated as Suggestions of Error, and by opinion and decision of the Supreme Court of Mississippi entered June 14, 1948, certain paragraphs of the opinion of April 26, 1948 were withdrawn and the Suggestions of Error were overruled. The Supreme Court of Mississippi is the highest court of the State of Mississippi in which a decision in the suit could be had, and its judgment of June 14, 1948 aforesaid is a final judgment.

4. In said cause there is drawn in question the validity of a statute of the State of Mississippi, to-wit, the General Sales Tax Law incorporated in Sections 10,105, 10,109, Title 40, Chapter 3, Volume 7, of the 1942 Code of Mississippi, as amended, on the ground that as applied it is repugnant to Article I, Section 8, Clause 3 of the Constitution of the United States, known as the Commerce Clause, and the decision is in favor of its validity.

5. The errors upon which petitioner claims to be entitled to an appeal are those above indicated, and more fully set [fol. 113] out in the Assignment of Errors filed herewith. A jurisdictional statement is also filed herewith.

Wherefore, petitioner prays for the allowance of an appeal from said Supreme Court of the State of Mississippi, to the Supreme Court of the United States, in order that the decision of the Supreme Court of the State of Mississippi may be examined and reversed, and also prays that a transcript of the record, proceedings and papers in this case, duly authenticated by the Clerk of the Supreme Court of the State of Mississippi, may be sent to the Supreme Court of the United States, as provided by law, and that an order be made concerning the security to be required for costs.

Dated August 11, 1948.

Villard Martin, Joseph L. Seger, Phelan H. Hunter, Frank R. Clark, Jr., Garrett Logan, Attorneys for Petitioner and Proposed Appellant.

[fols. 114-116] [File endorsement omitted]

IN THE SUPREME COURT OF MISSISSIPPI

[Title omitted]

ORDER ALLOWING APPEAL TO THE SUPREME COURT OF THE UNITED STATES—Filed August 11, 1948

The petition of Interstate Oil Pipe Line Company for an appeal in the above cause to the Supreme Court of the United States from the Supreme Court of Mississippi and the assignments of errors and statement as to jurisdiction filed therewith and the record of said cause having been considered, and it appearing that Suggestions of Error filed herein are equivalent to petitions for re-hearing in other jurisdictions, and that final judgment in this cause was rendered June 14, 1948, it is

Ordered, that an appeal herein be and hereby is allowed to the Supreme Court of the United States from the Supreme Court of Mississippi, as prayed for in said petition, and that the Clerk of the Supreme Court of Mississippi shall prepare and certify a transcript of the record, proceedings, and judgment in the above cause and transmit the same to the Supreme Court of the United States within forty days from the date hereof.

Further ordered that said Interstate Oil Pipe Line Company shall give good and sufficient security in the sum of [fol. 117] Five Hundred ($500.00) Dollars, that it shall prosecute said appeal to effect, and if it fail to make its plea good, shall answer all damages and costs.

And said appellant now presenting a bond in the sum of Five Hundred ($500.00) Dollars, with United States Guarantee Company of New York, as surety, it is

Ordered that the same be, and is hereby, approved.

Dated August 11, 1948.

V. A. Griffith, Chief Justice of the Supreme Court of Mississippi.

[fols. 118-119] Cost Bond on Appeal for $500.00 approved and filed Aug. 11, 1948, omitted in printing.

[fol. 120-121] Citation in usual form showing service on A. H. Stone, filed Aug. 11, 1948, omitted in printing.

[fol. 122] [File endorsement omitted]

IN THE SUPREME COURT OF MISSISSIPPI

[Title omitted]

ASSIGNMENT OF ERRORS ON APPEAL TO THE SUPREME COURT OF THE UNITED STATES—Filed August 11, 1948

Your petitioner, Interstate Oil Pipe Line Company, a corporation, assigns the following errors in the record and proceedings in the said case:

I

In said suit there was drawn in question the validity of a statute of the State of Mississippi, to-wit, the General Sales Tax Law of said State, incorporated in Section 10,105 and 10,109, Title 40, Chapter 3, Volume 7 of the 1942 Code of Mississippi, as amended, on the ground that, as applied in this suit it was repugnant to Article I, Section 8, Clause 3 of the Constitution of the United States, known as the Commerce Clause, and hence invalid, and the decision of the Supreme Court of Mississippi was in favor of the validity of the said statute, which decision is hereby assigned as error.

[fol. 123] II

Petitioners transportation of crude oil by pipe line constituted interstate commerce. The State of Mississippi was and is without power to tax the privilege of engaging in such commerce. The said statute of Mississippi, as applied by appellee and by the Supreme Court of Mississippi, levies a tax of 2% of the gross proceeds of said transportation, directly taxes the privilege of engaging in, and is a burden upon interstate commerce, is repugnant to Article I, Section 8, Clause 3 of the Constitution of the United States and is invalid, and the Supreme Court of the State of Mississippi erred in not so holding and adjudging.

For which errors, petitioner prays that said judgment of the Supreme Court of Mississippi in the above entitled cause be reversed insofar as it sustains the tax of $20,296.36 col-

lected from this petitioner and a judgment be rendered in favor of petitioner therefor.

Dated August 11th, 1948.

Villard Martin, Joseph L. Seger, Phelan H. Hunter, Frank R. Clark, Jr., Garrett Logan, Attorneys for Petitioner and Proposed Appellant.

[fol. 124-155] [File endorsement omitted]

IN THE SUPREME COURT OF MISSISSIPPI

[Title omitted]

PRAECIPE FOR RECORD TO BE TRANSMITTED TO THE SUPREME COURT OF THE UNITED STATES—Filed August 11, 1948

To the Clerk of the Supreme Court of Mississippi:

You are hereby requested to make and certify a transcript of the record to be filed in the Supreme Court of the United States pursuant to an appeal allowed in the above entitled cause, and to include in such transcript of the record the following, and no other papers and exhibits, to-wit:

1. Declaration originally filed in this cause in the Circuit Court of the First District of Hinds County, Mississippi;

2. Answer originally filed in this cause in the Circuit Court of Hinds County, Mississippi;

3. Agreed Statement of Facts originally filed in this cause in the said Circuit Court;

4. Judgment of the said Circuit Court;

5. Petition for Appeal in the Supreme Court of Mississippi;

6. Assignment of Errors on Appeal From Said Circuit Court;

7. Order and Judgment of the Supreme Court of Mississippi entered herein April 26, 1948;

8. Suggestion of Error filed herein by Appellant;

[fol. 156] 9. Suggestion of Error filed herein by Appellee;

10. Order and Judgment of the Supreme Court of Mississippi entered herein June 14, 1948;

11. Petition for Appeal to the Supreme Court of the United States;

12. Assignment of Errors on Appeal to the Supreme Court of the United States;

13. Jurisdictional Statement on said Appeal;

14. Order Allowing Appeal to the Supreme Court of the United States;

15. Bond on Appeal to the Supreme Court of the United States;

16. Citation and proof of service thereof;

17. Proof of Service of copy of petition for and order allowing the appeal, assignments of error, jurisdictional statement and statement directing attention to the provisions of Paragraph 3 of Rule 12 of the Rules of the Supreme Court of United States;

18. Any statement or motions which may be filed by appellee pursuant to provision of Paragraph 3, Rule 12, of the Rules of the Supreme Court of the United States;

19. This praecipe and service thereof;

20. Opinion of the Supreme Court of Mississippi herein rendered April 26, 1948;

21. Opinion of the Supreme Court of Mississippi herein rendered June 14, 1948.

Said transcript to be prepared as required by law and the rules of this Court and the rules of the Supreme Court of the United States, and to be filed in the office of the Clerk of The Supreme Court of the United States, at Washington, D. C., on or before September 21st, 1948.

Dated August 12, 1948.

Villard Martin, Joseph L. Seger, Phelan H. Hunter, Frank R. Clark, Jr., Garrett Logan, Attorneys for Appellant.

[fol. 157] Service of the above praecipe accepted and acknowledged this 11th day of August, 1948.

J. H. Sumrall, Attorney for Appellee.

[fol.158] Clerk's Certificate to foreging transcript omitted in printing.

[fol. 159] IN THE SUPREME COURT OF THE UNITED STATES

[Title omitted]

STATEMENT OF POINTS ON WHICH APPELLANT INTENDS TO RELY—Filed September 27, 1948

Appellant, Interstate Oil Pipe Line Company, in its appeal herein from the judgment of The Supreme Court of Mississippi, intends to rely on the following points as error:

1. The said Court erred in not holding that appellant's transportation of crude oil by pipe line constituted interstate commerce.

2. The said Court erred in not holding invalid as applied the statute of Mississippi imposing a tax of 2% of the gross receipts of the appellant's business of transporting crude oil by pipe line for hire.

3. In said suit there was drawn in question the validity of a statute of the State of Mississippi, to-wit, the General Sales Tax Law of said State, incorporated in Sections 10,105 and 10,109, Title 40, Chapter 3, Volume 7 of the 1942 Code of Mississippi, as amended, on the ground that, as applied in this suit it was repugnant to Article I, Section [fol. 160] 8, Clause 3 of the Constitution of the United States, known as the Commerce Clause, and hence invalid, and the decision of the Supreme Court of Mississippi was in favor of the validity of the said statute, in which decision the Court erred.

4. Appellant's transportation of crude oil by pipe line constituted interstate commerce. The State of Mississippi was and is without power to tax the privilege of engaging in such commerce. The said statute of Mississippi, as applied by appellee and by the Supreme Court of Mississippi, levies a tax of 2% of the gross proceeds of said transportation, directly taxes the privilege of engaging in, and is a burden upon interstate commerce, is repugnant to Article I, Section 8, Clause 3 of the Constitution of the United States and is invalid, and the Supreme Court of the State of Mississippi erred in not so holding and adjudging.

Villard Martin, Garrett Logan, Attorneys for Appellant.

Due service and receipt of a copy of the within statement of points on which appellant intends to rely admitted this September 24th, 1948.

J. H. Sumrall, Attorney for Appellee.

[fol. 161] IN THE SUPREME COURT OF THE UNITED STATES

[Title omitted]

DESIGNATION OF PORTION OF THE RECORD TO BE PRINTED—Filed September 27, 1948

Pursuant to the rules of this Court the appellant Interstate Oil Pipe Line Company, a corporation, designates the whole of the record as filed to be printed, except the jurisdictional statement, being Item 13 in the praecipe for record to be transmitted to this Court.

Villard Martin, Garrett Logan, Attorneys for Appellant.

Due service and receipt of a copy of the within designation admitted this September 24th, 1948.

J. H. Sumrall, Attorney for Appellee.

[fol. 161a] [File endorsement omitted]

[fol. 162] SUPREME COURT OF THE UNITED STATES

ORDER NOTING PROBABLE JURISDICTION—October 18, 1948

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

Endorsed on Cover: Enter Villard Martin. File No. 53,289. Mississippi, Supreme Court, Term No. 287. Interstate Oil Pipe Line Company, Appellant, vs. A. H. Stone, Chairman State Tax Commission. Filed September 18, 1948. Term No. 287 O. T. 1948.